

CONFIDENTIAL.

NOTES

ON

EXTRADITION

HYDERABAD RESIDENCY

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FOREWORD.

The extradition cases dealt with by this Residency include not only falling under the Extradition Act and its Rules, but questions which have to be decided in the light of Treaty, Agreement and local law peculiar to this State. The frequent complexity of points for decision called my attention to the need of completing the collection of extradition precedents, which had fallen into arrears, and H. R. Lynch-Blosse, I. C. S., my Second Assistant Resident, has done this at my request. At the same time he has added to my own and my successors' obligations to him by compiling with thoroughness and ability these Notes on extradition practice, which, together with Appendix on Jurisdiction in the Administered Areas, constitute a valuable treatise on the subject that will prove of permanent value to all members of the Residency office in handling extradition cases. Notes will be found useful also, it is believed, by neighbouring States and Administrations for reference.

S. M. FRASER,
Resident at Hyderabad.

1918.

INTRODUCTION.

Some time ago the Resident directed that the Extradition Precedents, a collection of considerable value which however had not been revised for many years, should be brought up to date. This has been done and having in the course of so doing traversed practically the whole field of extradition at Hyderabad it occurred to the Resident of these notes that it might be worth while collecting the local precedents in extradition into the form of a few notes which would save a good deal of searching and perusing of old files when any future case should arise. This suggestion met with the approval and sanction of the Resident and as a result these Extradition Notes have been produced.

An attempt has been made as far as possible to avoid laying down law on controversial topics, the object in view having been the modest one of collecting and collating the views of past commentators rather than of giving an independent opinion as to the form which future criticism should take. Very little has indeed been said which cannot readily be verified either from the Precedents or from available publications.

An alphabetical arrangement has been adopted for the sake of convenience and the Notes are interleaved in the hope that those who use of them will record their own remarks on cases which may arise in the future.

The Notes are intended for official use only.

H. R. LYNCH-BLOSSE.

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ADMINISTERED AREAS.

An alphabetical accident decrees that this subject should find its place at the commencement of these notes, whereas logically it should come at the conclusion. The notes give some account of the extradition practice between British India, and Hyderabad and other Native States, and although it is impossible to avoid in them some mention of the Administered Areas specific discussion of the latter has been reserved in order that the subject may be dealt with more or less as a whole. It is therefore proposed here to mention some of the details in which the practice as regards extradition in the Administered Areas differs from the ordinary practice. Following the arrangement adopted in some of the other notes this will be done under a series of heads.

A.—*General arrangements:*

Appendix F, gives some account of the nature of the British jurisdiction in Secunderabad, the Residency Bazars and Railway lands. Briefly it may be said that the nature of our jurisdiction is similar in all three areas although it differs in origin, and that the British Government possesses plenary jurisdiction including all the incidents of Paramountcy without however possessing sovereign rights.

A subject which was at one time a good deal under discussion was whether or no the Treaty applies to the Administered Areas. The wording of Article 4 when it refers to the "territories belonging to or administered by either Government" seems to suggest that the Treaty is intended to apply to these areas. This indeed was the view taken by the Resident in 1890^a in connection with Berar, and a similar view was expressed in 1891^b in connection with the Residency Bazars and Bolaram, although Secunderabad was excluded. On the other hand a contrary view was expressed in 1890^c in connection with the Residency Bazars and in view of the decision of the Government of India as regards Secunderabad in 1882^d there can hardly be any doubt that the Treaty does not apply to these areas. Reasons are given in Appendix F, for regarding the nature of our jurisdiction in the Residency Bazars, Secunderabad and Railway lands as identical, and it is submitted that what is true of Secunderabad is true also of the other areas.

Similarly the Extradition Act and the Rules thereunder do not apply to the Administered Area.^e

a. E. P. 26.

b. File No. 25 of 1891 (not in E. P.)

c. E. P. 23.

d. *Fide* Appendix F.

e. *Fide* Macpherson, Vol. I, page 225, and Schedule at page 223 ff.

It may therefore be asked what does govern extradition in the Administered Areas. The reply is that with the exception of Secunderabad there is nothing to govern it except practice. Fortunately there is a fairly consistent body of practice, based to some extent on the provisions of the Extradition Act and its Rules and it will be a matter of convenience if this is examined in detail. This has never been done before; indeed the whole subject is in a rather undefined state. It is therefore hoped that these notes will form a useful guide for the future.

The Secunderabad Rules¹ provide a simple machinery for extradition between Secunderabad and Hyderabad. The chief points to be noted are:—

- i. that the Resident is not bound to surrender a British subject from Secunderabad. In practice however British subjects are surrendered from Secunderabad just as freely as from British India.² The question of the nationality of the inhabitants of Secunderabad was in 1890³ intentionally left undecided.
- ii. that persons charged with an offence as defined in Section 40, Indian Penal Code, are surrendered on both sides.

B.—*Administered Areas and Hyderabad.*

It has just been shown that as between Secunderabad and Hyderabad subjects of either Government are surrendered as in the case of British India and for any offence as defined in Section 40, Indian Penal Code. The practice is much the same in the Residency Bazar and Railway lands from which persons are surrendered freely for any offence against the Indian Penal Code. An offence is defined in Section 40, Indian Penal Code, generally as anything made punishable under the Code, and a special definition is given for certain sections. As regards the Administered Areas the general definition only is applicable.⁴ Thus we find that while extradition is freely granted for offences against the Indian Penal Code⁵ surrender for offences against other Acts is only granted as a special case⁶ or is refused outright.⁷ The special arrangement which has been arrived at with regard to postal offenders is described under the head of Government Servants, and it will now be clear how the Resident, unfettered by the Extradition Act or Rules, is in a position to grant this concession as far as the Administered Areas are concerned.

¹ Appendix D.

² *Safe Native Indian Subjects.*

³ E. P. 27.

⁴ E. P. 63.

⁵ E. P. 28, 29.

⁶ E. P. 46 (which apparently refers to that portion of the Railway over which jurisdiction is asserted by the Bombay Government); E. P. 63, 65, 172.

⁷ E. P. 174.

The provisions of the Extradition Act and Rules with regard to *prima facie* evidence are however generally speaking observed and surrender is not granted unless adequate *prima facie* evidence is forthcoming," although perhaps the same standard of evidence need not be required. In a case of 1890^a the Resident noted "I think the evidence is enough, and I do not think we ought to make too much difficulty about surrendering between Secunderabad and the City; there is less danger of injustice being done in the City than in the mufussil, and it would be awkward for both sides if extradition could not be had readily in such cases". In another case the Resident^b wrote "I think it is desirable in the interests of justice that there should be a free use of the powers of surrender as between Secunderabad and the City, and the guarantees against injustice are much stronger in the case of an accused surrendered by us to the City tribunal than in the case of an accused surrendered to almost any other native tribunal in India".

Something has already been said regarding the surrender of British subjects from the Administered Areas and the moot question as to the nationality of inhabitants of the Administered Areas. This practice seems to have been established even before 1890^c when it was noticed by the Resident.

The principles of the Extradition Act are also followed in the matter of the detention of offenders pending surrender. The two months' rules is to be strictly enforced,^d the Minister being reminded in serious cases after six weeks. The Resident as Local Government has however the power to order detention beyond two months,^e a power which he exercised recently in the case of Abdul Wahab.^f

A practice which has sprung up in and is peculiar to the Administered Areas needs to be noticed, *viz.*, the practice of temporary surrender for the purposes of investigation. The object of this practice was thus described in 1905^g:—"The police officer making the requisition goes to the officer in whose custody the accused persons are and asks to be allowed to take them for purposes of investigation, and he has hitherto been allowed to do so on furnishing a receipt and undertaking to return the men within a given time. This arrangement which has nothing to do with formal extradition is completely reciprocal and appears to be necessary inasmuch as badmashes committing crime in the City can readily escape into Secunderabad and *vice versa*,

m. E. P. 89.

n. E. P. 20.

o. E. P. 25.

p. E. P. 23.

q. E. P. 83.

r. Op. Section 10 (3), Extradition Act.

s. E. P. 185.

t. E. P. 83.

while their offences can only be satisfactorily investigated in the place where they were committed; so that the police arresting them are more or less helpless. A regular application for extradition is of course impossible for before the investigation has taken place there can be no evidence to support such an application. But offenders thus informally and temporarily handed over are never placed before a Court for trial until they have been formally extradited. They are returned to the police officer from whom they have been received on loan so to speak and the police officer who has investigated the case sends his formal application for extradition through the proper channel."

The precedents describe the system quite clearly, but the following points need to be emphasised:—

- (i) Special reasons are to be given when application is made for temporary surrender.
- (ii) If no special reasons are given or if it is not clear that surrender is necessary for purposes of investigation it should be refused pending a reference to the Inspector-General or if necessary to the Resident.
- (iii) In cases of special importance a report should be made to the Resident after surrender.
- (iv) If no application is made within 24 hours of arrest the accused person should as usual be placed before the Magistrate and if surrender is required after that application will have to be made to the Court.
- (v) On no account is a person to be detained for more than 10 days.

C.—Administered Areas and British India.

If extradition between the Administered Areas and Hyderabad is guided in the main by local practice the question of extradition between the Administered Areas and British India is in a still more undefined state. The position has never been very clearly laid down, although it was considered in some detail in a case to which reference will be made. The practice however is fairly clear and has at least the tacit assent of the Government of India. It may even be said that it has by implication the assent of so high an authority as the Privy Council.

First as to the practice. Put very briefly it is this—In cases of surrender to British India the Resident accepts and gives effect to warrants issued in British India, in surrender from British India the Resident issues a warrant under Section 7 of the Extradition Act.

As regards surrender from British India, this practice is based on a ruling given by the Resident in 1892.* In this case the Superintendent of the Residency Bazars had issued a warrant under the Criminal Procedure Code, addressed to the Commissioner of Police, Calcutta, who inquired whether he had authority to do so. It was noted that strictly speaking neither the Superintendent, Residency Bazars, nor the Cantonment Magistrate, both are District Magistrates within legal warrants of arrest for British India appear to be great, and a wire was issued to the effect that the Superintendent, Residency Bazars, has the powers of a District Magistrate and there was probably no practical risk in executing his warrants in British India. The Resident however stated that in such cases there was no objection to warrants being issued under the Extradition Act.

This practice has since been uniformly followed,* even in the case of offences which are not entered in the Schedule of the Extradition Act.* It is submitted that the legality of such a warrant if the offence is not extraditable is liable to be challenged, but if the case was of sufficient importance a warrant under Section 9 might issue; otherwise it would be well to drop the matter.

As regards surrender from the Administered Areas a case of 1890* may be cited where steps were taken to give effect in the Administered Areas to a warrant issued outside. In this case the warrant had been issued in a Native State.

In 1896, in connection with Yusuf-ud-din's case shortly to be mentioned, the Government of India made certain inquiries regarding the practice in extradition between the Administered Areas and British India. It was then pointed out* that as regards Railway lands while surrender was granted to Hyderabad on submission of *prima facie* evidence and while jurisdiction was exercised regularly over Nizam's subjects committing offences in Railway lands, there were numerous instances in which the machinery for executing warrants received from British India had been set in motion, although in only one had such a warrant actually been executed. The Government of India then inquired whether the cases of receipt of warrants from British India had not been treated as extradition cases, the warrants having been treated or asked for as legalising custody by the police outside Railway limits when despatching the accused person to his destination. They further inquired whether warrants issued in British India had been treated as operating in Secunderabad and the Residency Bazars and *vice versa*.

* E. P. 83.

* E. P. 110, 150, 155.

* E. P. 110, 150.

* E. P. 37.

* File No. 497 of 1896 (not in E. P.)

In reply they were informed that the cases referred to had not been treated as extradition cases, no *prima facie* evidence having been called for and the original warrants having been forwarded for execution. As regards Secunderabad and the Residency Bazzars, under the Resident's orders warrants received from British India were executed within the limits of these areas. Warrants issued by Courts in Secunderabad and the Residency Bazzars were regarded as inoperative in British India and the existing practice required that the Resident should issue extradition warrants in such cases.

No orders have since been received from the Government of India from which it may fairly be assumed that the system has their approval. In the despatch however which the Government of India addressed to the Secretary of State in connection with Yusuf-ud-din's case they contended that such a warrant was tantamount to a demand for extradition which the Resident as the representative of the British Government might grant either as standing in the place of the Nizam or as an act of State. They also stated that undoubtedly the Governor-General in Council has the power in exercise of his ceded jurisdiction to direct that the processes of other British Courts shall be executed within the Railway limits over which jurisdiction is ceded both against persons who are foreign to the State ceding jurisdiction and also against the State's own subjects, although they admitted that such power had not in fact been exercised.

We must now turn to Yusuf-ud-din's case^b to which reference is made in Appendix F. In 1895 one Muhammad Yusuf-ud-din, who was an official of His Exalted Highness' Government, had been on a visit to Simla and after his departure a warrant was issued by the Magistrate at Simla for his arrest in connection with a criminal offence alleged to have been committed at Simla. The warrant was addressed to the Resident who endorsed it for execution to the Railway Police, and Muhammad Yusuf-ud-din was arrested within Railway limits at Shankarpalli. Muhammad Yusuf-ud-din appealed against the legality of his arrest to the Chief Court of the Punjab and subsequently, his appeal having been rejected, to the Privy Council. It is to be remembered that at this time the deeds of cession^c of jurisdiction over Railway lands had not been executed. Some account of the arrangements then in force is given in Appendix F. The Privy Council held that the arrest was illegal. This decision was based, not upon a consideration of the general question whether a warrant issued in British India can legally be executed in an area administered by the Governor-General in Council, but upon a consideration of the limited nature of

a. This would apply equally to areas where jurisdiction has been acquired otherwise than by cession.

b. P. C. Judgments, Vol. VII, page 239.

c. *Vide* Appendix E.

the jurisdiction which it was argued was then possessed by the Governor-General in Council over Railway lands in Hyderabad. It was held in fact that the Governor-General in Council, possessed only "jurisdiction which he Railway or in ; this jurisdiction, it was decided, was not sufficient to justify the arrest of a person on the Railway for an offence committed elsewhere and in no way connected with the administration of the line under a warrant issued by a Magistrate having jurisdiction in the part of British India where the offence was committed.

Now it may fairly be assumed that the Privy Council in deciding an important case likely this, had they considered that the warrant would have been illegal even if full jurisdiction had been ceded, would not have decided the case on a minor issue but would have considered the larger question as well. In other words their decision may be held to imply that had full jurisdiction been ceded the warrant, whether regarded as having been executed in the ordinary course or as tantamount to a demand for extradition, would have been legal. This at any rate is clearly the view taken by the Government of India who in spite of the facts as regards the existing practice having been placed fully before them contented themselves with inducing His Exalted Highness' Government to execute the formal deeds of cession which are now the basis of our jurisdiction in Railway lands.

As has been remarked therefore it may be assumed that the practice of giving effect in the Administered Areas to warrants issued in British India has the tacit assent of the Government of India and the implied assent of the Privy Council. Hence surrender from the Administered Areas to British India may be secured by the issue of a warrant in British India. It follows that surrender is confined to cases in which under the Criminal Procedure Code, a warrant may issue in the first instance, since it is not the practice to forward mere summonses.⁴

In conclusion two minor cases may be considered. One of these suggests an alternative procedure by which when a person is arrested in Railway limits whose surrender to British India is required evidence may be recorded by the Railway Magistrate on the analogy of Section 10(1) Extradition Act, and the man surrendered on application being made. In the other case a departure seems to have been made from the ordinary practice which has been outlined above.

⁴ d. *Fido Summons*.
 e. E. P. 181.
 f. E. P. 183.

**D.—Administered Areas and other Native States and
Administered Areas.**

Insufficient materials exist for the formulation of any principles of general application in cases under this head. A number of cases^g are indeed on record of extradition between the Administered Areas and other Native States, but these are all cases in which extradition was sought for offences entered in the Schedule to the Extradition Act and *prima facie* evidence was submitted. Hence they presented no particular difficulty.

In one case^h however which has already been noticed a warrant issued by the District Magistrate, Kolhapur, was under the orders of the Resident sent to the Cantonment Magistrate, Secunderabad, for execution.

It is submitted that in such cases the principles of the Extradition Act should be followed.

No case of surrender between the Administered Areas at Hyderabad and any other Administered Areas finds a place in the precedents, but such areas being under British jurisdiction, though not part of British India, should present little difficulty. Probably the Political Agent from whom surrender is sought would be prepared to issue an extradition warrant on application even without *prima facie* evidence.

^g. E. P. 121, 125, 144, 168, 171.

^h. E. P. 37. The offence, it may be noted, was extraditable under the Act.

BAIL.

Section 10 (4) of the Extradition Act provides that a person arrested in British India in connection with an offence committed in a Native State may be admitted to bail if the offence with which he is charged is in British India a bailable offence.

Where however a person is arrested in pursuance of a warrant issued under Section 7 he can only be admitted to bail if the warrant bears an endorsement under Section 8 (1).^a It is true that this view has not always been taken. Rule 8^b issued under Section 22 of the Act provides that persons arrested under Section 7 or Section 9 shall be treated as far as possible in the same manner as persons under trial in British India, while Section 7(2) provides that a warrant issued under Section 7 (1) shall be executed in the manner provided by the law for the time being in force with reference to the execution of warrants. In a case of 1895^c the First Assistant Resident expressed the opinion that bail could be granted. The matter has however been very recently decided by the Bombay High Court. In that case^d a warrant was issued to the Chief Presidency Magistrate, Bombay, for the surrender of one Murlidhar charged with an offence of cheating. The Magistrate for certain reasons referred the case to the Local Government and subsequently to the High Court. One of the questions referred was as follows:—

“Whether a Presidency Magistrate to whom a warrant has been addressed under Section 7 has power, apart from the provisions of Sections 8 and 8A to release the offender on bail, provided the offence alleged is one which would be bailable if committed in British India”.

In deciding this point Their Lordships thought he had no such power. The Act directed that the person when arrested should “unless released in accordance with the provisions of this Act”, be forwarded to the place and delivered to the person or authority indicated in the warrant. Then by clause 2 of Section 7 and by clause 1 of the same section it was provided that the Magistrate “shall act in pursuance of the warrant”. If he did those things it was not open to him to act under Section 496 of the Criminal Procedure Code and admit to bail

a. Section 8A. also provides for the grant of bail in case of reference to the Government.

b. Appendix C.

c. E. P. 47.

d. E. P. 186.

otherwise than was provided in the Extradition Act; and as the provisions of the Extradition Act were so specific and so clear there could be no doubt that they overrode the provisions of Section 496 of the Criminal Procedure Code.

In a converse case where the Magistrate seeking surrender to British India stated that he had no objection to the grant of bail His Exalted Highness' Government granted it accordingly.

CERTIFICATE UNDER SECTION 188, CRIMINAL PROCEDURE CODE.

Under Section 4^a of the Indian Penal Code a British subject is liable to be tried in British India for any offence committed within a Native State. Under Section 188 of the Criminal Procedure Code however before he can be tried a certificate must be obtained from the Political Agent to the effect that the charge is one which in his opinion should be tried in British India. The question arises when should such a certificate be granted and when should the State be asked to apply for extradition?

In view of the fact that extradition of British subjects to Hyderabad is only granted when special reasons exist^a it is clear that if such special reasons do not exist a certificate should be granted. Other circumstances which have been held to justify the grant of a certificate are the trivial nature of the offence,^b the convenience of the parties,^c the fact that His Exalted Highness' Courts do not wish to take up the case^d or that the Hyderabad Government have not applied for extradition,^e the fact that the accused person is being tried for other offences in British India^f or the fact that the offence is not extraditable.^g

His Exalted Highness' Government have no right to be consulted before a certificate is issued,^h although in doubtful cases a reference may be made to them.ⁱ

Section 188 of the Criminal Procedure Code however only applies to cases where the accused person is found in British India, and because British Courts would have jurisdiction if the man were so found it does not therefore follow that they are justified in asking for extradition. Such a request would ordinarily be refused.^j

a. *Vide* Native Indian subjects.

b. E. P. 53, 64.

c. E. P. 164.

d. E. P. 10.

e. E. P. 53.

f. E. P. 11.

g. E. P. 55.

h. E. P. 62, 64.

i. E. P. 164, 173.

j. E. P. 100.

CONVICTION, SURRENDER ON SAME FACTS AFTER.

It sometimes happens that surrender for an offence of theft is applied for after the offender has been convicted of an offence of retaining the property on the same facts in British India. The general principle in such cases is that extradition should not be granted.^a Wherever possible however in accordance with the instructions of the Government of India^b before the trial is proceeded with in British India an inquiry should be made as to whether His Exalted Highness' Government wish to proceed against the man for an offence of theft.

This general rule is however subject to certain exceptions in exceptional circumstances. Thus in 1911^c a man belonging to a gang of Minas committed house-breaking and theft in Hyderabad but as he had been convicted of retaining the stolen property by the Presidency Magistrate, Bombay, his surrender was refused. His Exalted Highness' Government were very anxious to obtain his surrender and to try him for the more serious offence. They referred to Sections 403 and 235 of the Criminal Procedure Code and urged that the man was still liable to be tried under Section 457. The First Assistant Resident referred to the ruling of the Bombay High Court in the case of Malu Arjan (Ratanlal, 5th Edition, page 84)^d in which it was held that a man might be charged and convicted separately for offences under Sections 380 and 457 although only one sentence could be inflicted. Relying on this technicality in the special circumstances of the case surrender was granted.

In another case^d the accused person had been convicted in British India for being in possession of a part of the property only which he had stolen in Hyderabad. The First Assistant Resident pointed out that this case was not quite parallel with the precedents in which surrender had been refused inasmuch as the conviction was in respect of a portion of the property only; an instance might quite well occur in which a man stole property of great value and escaped across the border with a portion only. He might be convicted of being in possession of this property of small value and sentenced to a light term. If on this account he was not to be surrendered he could after serving his sentence return and enjoy the remainder of the property without interference. He therefore considered that the man should be surrendered, but in doing so it should be made clear that he must only be tried

a. E. P. 76, 114, 146, 166.

b. Letter No. 3483-I.B., dated 14th August 1902 to A. G. G. in C. I., E. P. 166.

c. E. P. 120.

d. E. P. 163.

in respect of that property for the dishonest possession of which he had not already been tried and that the punishment already inflicted should be taken into account. The Resident agreed with this and the man was surrendered accordingly.

These cases illustrate forcibly the advisability of making a reference to the Resident before proceeding with the trial in British India, a course which had it been adopted in these cases would have saved much trouble. This provision however seems insufficiently familiar to Magistrates in British India.

DESERTERS.

The right to demand the surrender of deserters from the Imperial Army is one which is inherent in the Paramount Power and is not based on reciprocity. Consequently such deserters are invariably surrendered.

Desertion from Imperial Service Troops was in 1896^b made an extradition offence and according to the Extradition Act as it now stands such deserters can be extradited on the submission of *prima facie* evidence.^c

The case as regards deserters from His Exalted Highness' Regular Troops is on a somewhat different footing. The old theory was that such persons could not be surrendered but should if enlisted in the British Army be discharged.^d In 1906 however His Exalted Highness' Government drew attention to Article 7 of the Treaty of 1798 according to which "sepoys deserters from the service of His Highness shall be seized and delivered up without delay", and they contended that this provision gave them the right to demand the surrenders of deserters. On a reference to the Government of India it was ruled^e that this view was correct and that Section 18 of the Extradition Act would apply to cases of desertion from His Exalted Highness' Regular Troops. This however does not apply to the Irregular Troops. Hence deserters from His Exalted Highness' Regular Troops are now surrendered just as are deserters from the Imperial Army.^f

In 1917^g as a matter of courtesy His Exalted Highness' Government agreed to postpone their demand for the surrender of a deserter as he had enlisted in the British Army and was on field service. This concession is however not to be considered as a precedent, although no doubt His Exalted Highness' Government would again extend their courtesy in a similar emergency.

a. E. P. 71.

b. E. P. 71 and Schedule to Extradition Act.

c. E. P. 171, where the descriptive roll was considered sufficient as *prima facie* evidence.

d. E. P. 7, 23, 71.

e. Letter No. 1775-I.B., dated 16th May 1907; E. P. 104.

f. *Vide* a. g. E. P. 108.

g. E. P. 189.

EUROPEANS AND AMERICANS.

The nature of the inherent rights of the Paramount Power is explained under the head of Paramountcy and it remains here only to consider what is the actual practice and how far jurisdiction has been conceded to His Exalted Highness' Government over Europeans and Americans. The whole matter is fully and concisely discussed in E. P. 65 and 69 and reference may also be to E. P. 142. It may however be convenient briefly to sum up what is there said under various heads.

The Government of India in letter No. 1334, dated 6th September 1899, say "It is sufficient to say that jurisdiction over Europeans and Americans resident in Native States is a prerogative of the Paramount Power which admits of no question and that any delegation of this jurisdiction to the Courts of a Native State is made not as a matter of right but as a concession by the Paramount Power to meet the convenience of the Native State concerned". Having thus emphatically laid down the general principle they add that in the special circumstances of Hyderabad it may be possible and even desirable to apply a treatment which could scarcely be suggested for any other Native State in India.

The concessions which have been made are as follows:—

Europeans and Americans who are not in the service of the State.

These will normally be tried by the Special Magistrate,^b Hyderabad, being a European British subject appointed with the consent and approval of the Resident. This Magistrate in cases of which he is himself not competent to dispose will commit.

- (a) to the High Court of Bombay, in the case of all European British subjects of His Majesty, and
- (b) to the Resident at Hyderabad, in the case of all Europeans and Americans not being European British subjects.

The procedure to be followed shall be that of the Criminal Procedure Code. The Resident is to be informed at once of the charge.*

a. E. P. 65.

b. Notification No. 579-D, dated 26th January 1917, Mapherron, Volume VI, page 37.

c. E. P. 69.

Europeans and Americans in the service of the State (other than those whose services have been lent by the British Government),

In a sanad of 1861^a from the Nizam's Government it was stated that "Europeans, foreigners and others, descendants of Europeans and born in India, except those employed by the Circar and its dependants" shall be tried by the Resident or other officer appointed by him. The Minister in his letter No. 1437, dated 29th September 1900^e stated in reference to this sanad that His Exalted Highness' Government "have reserved to themselves the right to try such persons." The Government of India in commenting on this wrote "The Government of India have always maintained their right to exercise criminal jurisdiction over all Europeans in Native States; they have ever insisted that that right is one of prerogative in no way dependent upon or capable of limitation by the terms of the sanad of 1861 to which His Highness' Government has again drawn attention; they have it is true admitted that in practice it may not in every case be necessary to insist on exercising the right; but before the initiation of proceedings a Native State is required to report to the Political Officer any complaints against Europeans or Americans, whether employed by the State or not, with a view to his determining the Court by which the case should be tried". Finally in letter No. 2438-I.B., dated 26th June 1901^f they wrote "There is no objection to the Courts in Hyderabad State continuing to exercise jurisdiction as heretofore over Europeans and Americans in the employment of the State other than those whose services have been lent to the State by the Government of India, provided that it is clearly understood that in any case where the Government of India so desire the proceedings must be stayed and the offender transferred for trial to a British Court. The Government of India will not insist in such cases on a previous report to the Resident with a view to his determining the Court in which they shall be tried. They will ordinarily be tried in the State Courts and the Resident will only intervene if he thinks it necessary. But as in the case of charges preferred against Europeans and Americans tried by the Special Magistrate the Resident should always be at once informed of the charge."

Hence such persons would be tried by the ordinary State Courts, the proceedings being conducted in accordance with the provisions of the Criminal Procedure Code.*

a. Aitchison, Vol. IX, page 107.

e. E. P. 65.

f. E. P. 69.

g. E. P. 65.

Europeans and Americans in the service of the British Government.

With the special sanction of the Government of India such persons can be tried by the ordinary State Courts ^a. In coming to the conclusion whether such persons should be tried by the State Courts or whether the right of exclusive jurisdiction¹ should be exercised regard would presumably be had to the principles governing the surrender of any other Government servant.¹

It thus appears that jurisdiction over Europeans and Americans in the service of the State (other than those whose services have been lent by the British Government) has been conceded; jurisdiction over Europeans and Americans not in State service has been delegated by the Governor-General in Council to a Special Magistrate, the High Court of Bombay or the Resident, as the case may be, exercising original and appellate jurisdiction; while jurisdiction over Europeans and Americans in the service of the British Government is either reserved or conceded as the Government of India may in each case decide.

It may be noted that in all cases when cognisance is taken of charges against Europeans and Americans the police of His Exalted Highness' Government cannot arrest without warrant unless arrest without warrant is permitted by the Criminal Procedure Code in similar cases in British India.²

^a. E. P. 65 and 142

ⁱ. *Fide* Paramountcy.

^j. *Fide* Government servants.

^k. E. P. 65.

EVIDENCE.

Article 5 of the Treaty states that "in no case shall either Government be bound to surrender any person accused of any offence—except upon such evidence of criminality as according to the laws of the country in which the person accused shall be found would justify his apprehension and sustain the charge if the offence had been there committed". This is the law in cases of surrender from Hyderabad to British India. Surrender from British India to Hyderabad is however governed by the Extradition Act and the Rules^b framed under Section 22 thereof, and the law as regards evidence of criminality is contained in Rule 4 which reads "The Political Agent shall in all cases before issuing a warrant under Section 7 of the Act satisfy himself by preliminary inquiry that there is a *prima facie* case against the accused person". The term "*prima facie* case" is not defined and no attempt will here be made to decide a somewhat contentious point beyond indicating the views which have been held in past cases.

Before proceeding further it is necessary to examine briefly the history of this Rule. Previously to 1913 the Rule contained the words "or otherwise" after "preliminary inquiry", but in the discussion in Council^c on Act I of 1913 to amend the Extradition Act there was a good deal of discussion in which Sir Vithaldas Thackersey mentioned a supposed tendency on the part of Political Officers to issue warrants arbitrarily and without *prima facie* evidence. It was in deference to this that a Notification^d was issued deleting the words "or otherwise" from the Rule in question.

It is thus clear that while it is open to His Exalted Highness' Government voluntarily to surrender criminals to British India without *prima facie* evidence it is not open to the Resident to reciprocate in this matter. Reference will again be made to this point below.

Various questions have arisen in the past as to what should be considered sufficient evidence and what is the duty of the Resident in connection therewith and an attempt is made below to collect in convenient form the local precedents under a series of heads.

A.—*Accomplice.*

Under Section 133 of the Evidence Act the evidence of an accomplice is sufficient even without corroboration to justify a conviction,

a. *Ido* Procedure.

b. Appendix C.

c. *Ido* Gazette of India, 29th September 1912, Part VI, page 692-11.

d. Foreign Department Notification No. 826-D, dated 26th March 1913.

although under Section 114 iii. (b) the Court may presume that an accomplice is unworthy of credit unless corroborated in material particulars. In 1896^e the Hyderabad Government sought extradition from British India on the strength of the evidence of accomplices and the Resident observed "We ought not to deal with these applications from the standpoint of a Sessions Judge who has to decide whether the evidence before him is sufficient to justify conviction. The nature of the evidence of criminality which is required in these cases is specified in article 5 of the treaty,^f and I think that according to the law of British India the evidence of an accomplice is sufficient both to justify arrest and to sustain a charge; whether it is also sufficient to procure a conviction can be decided only by the person who tries the case and hears all the evidence".

Two years later^g a converse case arose and the Minister refused extradition. The Resident remarked in reply that it appeared to him that applications for extradition under article 5 of the treaty should not be dealt with from the standpoint of a Sessions Judge who has to decide whether the evidence before him is sufficient to justify conviction, but that all that was required was that the evidence should be sufficient to establish a *prima facie* case; whether it is also sufficient to procure a conviction can only be decided by the person who tries the case and hears all the evidence. The Hyderabad Government then reconsidered the case and gave orders for surrender.

On the other hand the mere confession of a co-accused person being insufficient under Section 30, Evidence Act, to justify a conviction cannot be accepted as *prima facie* evidence, although if such a person is after his conviction examined on oath his statement is sufficient to justify surrender.^h But in a case of surrender to British India the confession of a co-accused was forwarded to His Exalted Highness' Government, they being left to object or not. In another case His Exalted Highness' Government accepted the confession of a co-accused person as sufficient evidence.ⁱ

B.—Confession:

The case of the confession of a co-accused has just been considered. The confession of an accused person is considered as sufficient evidence to justify surrender.^k

e. L. P. 54.

f. This note appears to overlook the Agreement of 1857.

g. E. P. 54.

h. E. P. 157, 163.

i. L. P. 163.

j. E. P. 163.

k. E. P. 114, 127, 157.

C.—Complainant.

It has never been definitely ruled whether or no the sworn statement of a complainant is sufficient as *prima facie* evidence, but in 1908¹ the Office noted that in view of Section 134, Evidence Act, and the ruling in W. R. XXII 32—32 to the effect that a conviction based only on the sworn statement of a complainant is legal such a statement would be sufficient for the purposes of extradition. The First Assistant Resident remarked that it was not usually so considered. In one case² however His Exalted Highness' Government granted surrender on the mere statement of a complainant contained in a letter.

D.—Duty of Resident.

The Resident has a twofold duty, (i) in relation to surrender to British India from Hyderabad and (ii) in relation to surrender from British India to Hyderabad. It is clear that in the former case where he has not to decide on the merits of the evidence his duty is less onerous than in the latter where he has on the evidence submitted to him to decide whether or no extradition shall be granted and to issue or withhold his warrant accordingly.

At the same time in the former case the Resident is more than a mere forwarding agent, for although he does not by sending on the evidence thereby certify its sufficiency, still he is under an obligation not to send on evidence which is manifestly inadequate and which must involve further delay and correspondence. Hence in a case of 1891³ where a Magistrate sent a mere statement of the facts of the case the Resident refused to send it on and asked for more detailed evidence.

It is not however for the Resident to anticipate objections on the part of the Hyderabad Government. In 1892⁴ the Resident noted "I do not think it is our business to anticipate objections in cases in which extradition is applied for from Hyderabad. I agree with the Second Assistant's note (in E.P. 34) except that I think we need not write in advance to the applying Magistrate for what is called 'proper' evidence. I do not know what evidence the Nizam's Government may consider sufficient or otherwise in any particular case. If they object and the objection is reasonable it is our duty to refer it to the applying Magistrate. Nor are we responsible if the applying Magistrate sends up defective evidence".

1. File No. 273 of 1908 (not in E. P.)

m. E. P. 91.

n. E. P. 34.

o. E. P. 39.

Again in 1895¹ the duty of the Resident was thus defined "As it rests with His Highness' Government to decide what evidence is sufficient in respect to applications made to them, our practice is to forward such evidence as we receive (unless it is manifestly inadequate) to the Minister with a request for surrender, and at the same time we ask the Magistrate concerned to supplement his original application with other evidence adequate in form and kind."

It is also open to the Resident, should the Nizam's Government refuse surrender on the ground of the inadequacy of the evidence, to protest against such a refusal should he consider it unjustifiable.²

On the other hand in cases of surrender from British India the Resident has to decide whether or no the evidence is sufficient to justify surrender. Some indications are given in these notes as to what kind of evidence may be accepted in various cases but clearly each case must be decided on its merits. One passage has already been quoted under the head of "Accomplice". Reading Rule 4 of the Rules with Article 5 of the Treaty this passage may perhaps be taken to mean that the evidence should be sufficient to justify not only the arrest of the accused person and his being placed before a Magistrate but also the framing of a charge, whether or no the trial eventually ends in conviction.

In 1891³ the Resident wrote "Theoretically speaking the evidence should be recorded by a Magistrate and practically it will be well to insist on this in the case of extradition to Hyderabad".

In cases of surrender from one Native State to another the Resident is in fact little more than a forwarding agent. Some remarks on the attitude which he should adopt will be found on page 60 of the Political Officers' Manual.

E.—Escape from lawful custody.

Cases of escape from lawful custody frequently occur. These may be divided into (i) cases where the offender has already been convicted and (ii) cases where he has not been convicted.

As regards the former class of cases the Resident in 1890⁴ wrote "I think copies of the official documents proving the conviction would be sufficient in the case of an escaped convict. Properly speaking copies of the warrants issued or conviction as well as the descriptive rolls should be sent, and this should be done in future".

p. E. P. 59.
pp. E. P. 54, 136.
q. E. P. 34.
r. E. P. 19.

22

This principle was followed in a case of 1912.

In the latter class of cases it is clear that the accused person can be surrendered either on the facts or on the evidence of one of such cases. Evidence of one of such cases of 1890 of the escape from custody together with evidence of the original offence of theft for which the man was to be tried seems to have been required. But in a recent case this view was criticised by the Resident who wrote "With this view I do not agree; since the extradition of the accused is not asked for under the section of the Hyderabad Penal Code relating to theft but under a section corresponding with section 224, Indian Penal Code, i.e., for escaping from custody in which he is lawfully detained for an offence. To establish a *prima facie* case under Section 224, Indian Penal Code, justifying extradition we have only to be assured that accused was lawfully detained, i.e., was in the custody of the regular police and that on the charge of having committed an offence. The necessary evidence on these points is afforded by the statement of the Sadar Amin of C.I.D., now furnished to us, if this official is the highest departmental officer having personal cognisance of the case". The principle thus laid down was followed in a subsequent case of 1917.

F.—Language.

The Bombay Government in 1908 issued Resolution No. 437-J., dated 24th January 1908 directing that depositions if recorded in any language other than English or Urdu should be accompanied by an English translation. In 1912 the District Magistrate, Kistna, forwarded depositions in Telugu which were returned with a request that an English translation might be forwarded.

G.—Must be recorded on solemn affirmation.

It has already been pointed out that the necessity in cases of extradition is that the evidence should be recorded by a Magistrate. The only evidence which could properly speaking sustain a charge is evidence taken on oath before a Magistrate which gave ground for presuming that the accused had committed an offence."

a. E. P. 130.

b. E. P. 66.

c. E. P. 184.

d. E. P. 185.

e. E. P. 96.

f. E. P. 134.

g. E. P. 34.

h. E. P. 59.

In 1913^a the Minister took exception to the depositions forwarded on the ground that the statements of the witnesses had not been recorded by a Magistrate. It was however pointed out that this was a mistake and the objection was then withdrawn.

H.—*Police report.*

A distinction has already been drawn between evidence in cases of surrender from British India and those of surrender to British India and it has been shown that His Exalted Highness' Government have in the latter case a wider discretion under the Treaty than has the Resident under the Act and Rules in the former case. Thus we find that while the Resident may forward to His Exalted Highness' Government evidence which he would not accept himself as sufficient His Exalted Highness' Government have occasionally exercised their discretion in favour of accepting such evidence.

Referring to cases of surrender to British India the Second Assistant Resident in 1891^b noted "Generally statements taken by superior officers of police such as District Superintendents and Assistant Superintendents can be relied on, for though the witnesses are not on oath yet they are bound to speak the truth and can be punished if they do not. Moreover the District Magistrate who makes an application for surrender is bound to see that his application is justifiable and therefore to see that the evidence recorded is reliable. We might therefore accept (i) evidence recorded by a Magistrate, (ii) evidence recorded by superior officers of police. It rests with the Nizam's Government to decide whether evidence is sufficient in particular cases. Hence if a police report is received from British India supporting an application for surrender it can be forwarded to the Minister, the Magistrate being at the time asked to send proper evidence. If the Minister likes to surrender on the report well and good. But from a recent case there seems to be a tendency on the part of His Highness' Government to be particular about the evidence forwarded to them". The Resident accepted this view.

Again in 1898^c the Resident wrote that in practice an understanding had been arrived at that the evidence should be recorded either by a Magistrate or by a superior officer of police, and that this arrangement had worked well.

In this connection it is submitted that there should seldom be any difficulty in obtaining proper evidence from British India and it would perhaps be well in view of the fact that the British Government are

a. E. P. 186.

b. E. P. 34.

c. E. P. 69.

not in a position to reciprocate to insist upon it in all but very exceptional cases. As somewhat ambiguously remarked in 1891, Magistrates are as thick as blackberries in British India.

I.—Evidence recorded at place of arrest.

It occurs quite often that the accused person makes a confession when arrested or that other evidence is recorded at the place of arrest.^{cc} Such evidence is of course sufficient for purposes of extradition. A case of this nature occurred in 1890^d in which it appears that a good deal of correspondence and trouble might have been saved had the Minister been asked to send for the evidence alleged to have been recorded by the Magistrate of Koppal. All the other recorded cases^e are in connection with surrender from British India, when it is customary simply to inform the Minister that the Resident is prepared to issue a warrant if surrender is required.

J.—Surrender without *prima facie* evidence.

The above notes will have made clear the necessity of some *prima facie* evidence prior to surrender, although there is room for a good deal of discussion as to what is the minimum evidence which may be accepted. Nevertheless some few cases have occurred in which surrender has been granted without evidence, but examination will show that in each case there are special reasons and no general precedent can be established.

In the only recorded case^f of such surrender from British India the offender had already once been surrendered on a warrant issued by the Resident but had escaped. Hence there was clearly no necessity of recording the same evidence over again.

In 1893^g an offender was surrendered from Hyderabad to Kolhapur without evidence but this appears to have been due solely to a mistake on the part of the District Magistrate who surrendered. In 1915^h His Exalted Highness' Government surrendered a man concerned in the Lahore conspiracy case prior to receipt of *prima facie* evidence, but this was purely an act of courtesy on their part in consideration of the importance of the case.

An important case of this nature occurredⁱ in 1916ⁱ when the matter was very fully discussed. In that case the Madras Government

c.c. *Vide* Section 10 (1), Extradition Act.

d. E. P. 31.

e. E. P. 114, 127, 129, 133, 167, 173, 181.

f. E. P. 58.

g. E. P. 43.

h. E. P. 162.

i. E. P. 177.

asked for the surrender without *prima facie* evidence of some subjects of the Nizam on the ground that the recording of evidence would result in unnecessary delay and protraction of the trial. His Exalted Highness' Government were asked to comply with this request if there were no objection. Eventually they agreed to do so stipulating (i) that the case should not form a precedent, and (ii) that the Government of Madras would act similarly if His Exalted Highness' Government required the surrender of British subjects.

The case was noted on at length^d and in the event a reply was given in which it was stated with regard to condition (i) that as a matter of general practice the Resident found no difficulty in acceding to the wishes of His Exalted Highness' Government. With regard to condition (ii) the Resident stated that if it was intended merely that the Madras Government should surrender British subjects for trial subject to the usual preliminaries the Resident was prepared to accept the condition since it had been for many years past the practice for both Governments to observe reciprocity in surrendering persons who are not subjects of the Government making the requisition. He added "If a similar case arose when *prima facie* grounds existed for believing the accused to have committed an offence even though special circumstances prevented the formal recording of the evidence of witnesses the Resident would have no objection to advising the surrender of the accused with a view to meeting the ends of justice. It would however be understood that such a requisition would only be made in very exceptional circumstances and that special reasons would be given for the non-submission of the usual evidence of criminality".

Subsequently the Madras Government again applied for the surrender of other persons concerned with the same case without *prima facie* evidence, but before approaching His Exalted Highness' Government again they were asked whether the evidence already recorded against the persons who had been surrendered could not be forwarded and failing this whether other evidence could not be recorded.

In connection with this case the following observations are offered:—

- a. Before surrender the men had already been tried in Hyderabad for offences apparently connected with those for which surrender was requested: His Exalted Highness' Government may therefore, although they did not admit it, have been in possession of facts which would justify surrender.

j. The writer of these notes pleads guilty to having put forward a view which study has led him to modify.

b. *Despite the trouble involved little advantage would seem to have resulted. The object of the Madras Government was to avoid delay. Their first letter on the subject was dated 20th December 1916 but it was not until 2nd September 1917 that the men were surrendered. In the interval sufficient evidence might have been recorded to secure the surrender of the inhabitants of a good-sized town!*

c. *It has already been pointed out that while His Exalted Highness' Government have the option of granting surrender without evidence under the Treaty the Resident has technically no such option under the Act and Rules. It is difficult to imagine a case in which any real necessity for invoking this precedent should arise and the cautious wording of the undertaking given by the Resident is perhaps sufficient safeguard against its abuse.*

Some further remarks on the subject of surrender without evidence will be found under the head of Government Servants.

EXTRADITABLE OFFENCE.

The term "extraditable offence" is here used to cover not only extradition offences as defined in Section 2 of the Extradition Act and offences mentioned in Article 4 of the Treaty, but also offences for which extradition is granted by either Government according to custom or precedent.

Extraditable offences may thus be divided into the following categories which will be separately considered.

- (a) Offences extraditable both under the Act and the Treaty.
- (b) Offences extraditable under the Treaty but not under the Act.
- (c) Offences extraditable under the Act but not under the Treaty.
- (d) Offences extraditable neither under the Act nor under the Treaty.

A.—Offences extraditable both under the Act and the Treaty.

This class of cases needs no special comment.

B.—Offences extraditable under the Treaty but not under the Act.

Owing to the restricted scope of Article 4 of the Treaty as compared with Schedule I of the Act this class of cases is necessarily small, but such cases do occur and the Treaty requires that extradition should be granted. The difficulty that, as regards surrender from British India, the Extradition Act does not provide for extradition in such cases is met by Section 18 of the Act which says that nothing in the Act shall derogate from the provisions of any Treaty for the extradition of offenders; and a warrant under Section 7 may therefore be issued despite the omission of the offence from Schedule I.

In 1898^a a question was raised as to whether harbouring dacoits was an extraditable offence and the Resident gave it as his opinion that it was extraditable under the Treaty though not under the Act. The last paragraph of Article 4 of the Treaty, it may be noted, reads "being necessary to any of the above mentioned offences". In 1917^b a question arose as to the meaning of the term "accessory", and the Resident ruled that as the term was not defined in the Indian Penal Code it must bear the meaning attached to it in English law, and accordingly include not only "accessory before the fact" but also "accessory after the fact". In the case in question it appeared that the man whose extradition was sought from Hyderabad had been "accessory after the

^a E. P. 61.

^b E. P. 159.

fact" to acts of great personal violence, although it was proposed to prosecute him for offences under Sections 193 and 194, Indian Penal Code (which are not extraditable) committed in the course of the same transaction. This interpretation would therefore permit a Magistrate to obtain the extradition of an offender on a charge on which he does not propose to prosecute him in order that he may try him for an offence which is not extraditable.

It may be observed that in this instance such a procedure did not run counter to the orders of the Government of India^c regarding the offences for which a person extradited may be tried. But it is submitted that if the offence for which it was proposed to prosecute the man was entirely unconnected with that for which extradition was sought these orders would come in the way of such prosecution and it would probably be unwise to apply for surrender.

The case of deserters from His Exalted Highness' Regular Troops who are surrendered under a Treaty of 1798 may also be noted under this head^d.

C.—Offences extraditable under the Act but not under the Treaty.

It is not apparent when the practice of going beyond the Treaty up to the limits of the Schedule to the Extradition Act first sprang up, but instances occurred in 1890^e and 1900^f when surrender was sought on a charge of escape from lawful custody. In 1906^g in a case of extradition between Hyderabad and Baroda the Resident took the opportunity of urging upon His Exalted Highness' Government the advisability of following the lead given by the Government of India and taking a wider view of their obligations than that generally accepted in 1867. His Exalted Highness' Government concurred although at the time they seem to have contemplated expansion within the Treaty^h rather than a definite departure from Article 4 in favour of the Schedule to the Extradition Act. In 1914 however when His Exalted Highness' Government were considerably piqued by a correspondence which was going on on the subject of the surrender of Government servantsⁱ they took up a rather uncompromising attitude and display a tendency to revert to the more restricted schedule of the Treaty.^j Good however came out of evil and the matter reached a successful issue, His Exalted Highness' Government agreeing that in

c. E. P. 170, 191.

d. *Fide* Deserters.

e. E. P. 19.

f. E. P. 66.

g. E. P. 87.

h. E. P. 98.

i. *Fide* Government Servants.

j. E. P. 145.

future as in the past they would surrender criminals] to the 'Government of India on the basis of strict reciprocity in regard to offences not covered by the Treaty but provided for in the Schedule to the Extradition Act. That is to say where in any of the cases not covered by the Treaty the Resident on a due consideration of all the facts thinks that it is necessary or desirable in the ends of justice that there should be extradition His Exalted Highness' Government would be prepared to extradite on the understanding that in similar cases the Government of India would surrender criminals to His Exalted Highness' Government if His Exalted Highness' Government consider such extradition is desirable or necessary in the ends of justice.

The legality of a warrant issued under Section 7 for an offence mentioned in the Schedule to the Act but not in the Treaty has recently been challenged^k, but the High Court of Bombay have decided that effect must be given to such a warrant^l, and it is therefore possible to reciprocate fully with His Exalted Highness' Government in this matter. It must however be remembered that the arrangement is a purely informal one between the Resident and His Exalted Highness' Government and every case of surrender for an offence not mentioned in the Treaty is a special one^m. Thus although it is impossible for either side to refuse surrender when a requisition is made without running the risk of damming the stream of reciprocity, it is open to the Resident to refuse to submit a requisition when for any reason he deems it undesirableⁿ.

A case has recently occurred in which His Exalted Highness' Government refused surrender in a case of theft on the ground that the value of the property stolen was less than Rs. 100, but as the matter is still under correspondence it is at present impossible to offer any remarks on the case.

In conclusion the case of offences against the Criminal Tribes Act must be mentioned here. Under the concluding paragraph of Schedule I of the Extradition Act the Governor-General in Council has power to notify that any offence against any Section of the Indian Penal Code or against any other law is an extradition offence and he possessed the same power under Section 11 of Act XXI of 1879. Notification No. 3361-I.A., dated 23rd December 1898 issued under the old Act and still in force makes extraditable any offence against the Criminal Tribes Act and surrender is accordingly granted for such offences on terms of reciprocity^o.

k. E. P. 186.

l. *Vide* Warrant.

m. E. P. 159.

n. E. P. 141, 159.

o. E. P. 92, 159.

D.—Offences extraditable neither under the Act, nor under the Treaty.

This class of cases comprises certain offences which while themselves of minor importance acquire a certain importance in relation to special departments, namely offences against the Post Office Act, Railway Act, etc. In these cases it is obviously impossible for the Resident to grant full reciprocity outside the Administered Areas except by taking action under Section 9 of the Extradition Act, a step which he would be reluctant to take except in the most exceptional cases.^p As a general principle therefore it may be stated that while in certain cases under this head His Exalted Highness' Government are prepared to grant extradition either to the Administered Areas or to British India the Resident can normally reciprocate only to the extent of the Administered Areas.

Surrender has been granted for offences against the Indian Post Office Act,^q Indian Railway Act,^r Indian Telegraph Act,^s and His Exalted Highness' Post Office Act.^t As regards the Post Office Acts a definite agreement^u has now been arrived at for reciprocal surrender on the lines above indicated, while in view of the arrangement arrived at between His Exalted Highness' Government and Mysore with regard to Postal, Railway and Telegraph offences^v His Exalted Highness' Government might accept a similar agreement in regard to Railway and Telegraph offences with the Resident should it be considered desirable at any time to make the suggestion.

The precedents regarding offences against the Police Act^w show that in these cases extradition should not normally be sought unless the facts reveal also an offence extraditable under the Act or the Treaty.

p. Although the offence might also fall within the definition of an extraditable offence, in which case there would be no difficulty about surrender: *Vide* E. P. 161, cp. E. P. 172.
 q. E. P. 68, 131, 137, 151.
 r. E. P. 41, 90.
 s. E. P. 58.
 t. E. P. 133, 151.
 u. E. P. 151. *Vide* also Government Servants.
 v. E. P. 90.
 w. E. P. 172, 176.

FOREIGN POWER.

A case of extradition between Hyderabad and a Foreign Power is treated exactly as if the extradition were between the British Government and the Foreign Power. That is to say the extradition treaty in force between the British Government and the Power in question would govern the case.

In 1889* the French Government applied for the extradition of an offender said to be in Hyderabad and the Government of India in letter No. 3004-I., dated 26th July 1889 wrote that they could not admit that any extradition arrangement with a Native State should be allowed to interfere with the due discharge of our international obligations, and that the treaty of 1867 applied merely to cases of surrender between the British Government and the Nizam's Government.

Similarly a converse case would be governed by the extradition treaty between the British Government and the Power in question. If extradition was sought the surrender of the offender to the Government of India who requested that the copies of the depositions should be certified by an official of the Hyderabad State and sealed with the Minister's seal and that a warrant of arrest issued by a competent authority in Hyderabad should be forwarded; the documents to be countersigned by the Resident.

GOVERNMENT SERVANTS.

The general question of jurisdiction over Government servants is discussed under the head of Paramountcy. It remains here to consider the actual cases of extradition which have occurred and to see how far concessions have been made from the general principle that Government servants carry their own personal law with them into State territory and are not amenable to the jurisdiction of His Exalted Highness' Courts.

Broadly speaking it may be said that the case of Government servants is parallel to that of sepoys of the British Army and hence the principle laid down in respect of sepoys applies *mutatis mutandis* to Government servants, *viz.*, that the Government of India cannot admit the right of a Native State to deprive the Paramount Power of the use of its servants while on duty.^a That the case of a Government servant and that of a sepoy are to be treated similarly is clear from a correspondence of 1897^b in which an inquiry was made of the Government of India regarding the jurisdiction of His Exalted Highness' Courts over members of the Thagi and Dakaiti Department. The Government of India in letter No. 2731-I.A., dated 23rd June 1897 replied that members of the Thagi and Dakaiti Department are not amenable to His Exalted Highness' jurisdiction; they referred to their letter No. 1955-I., dated 9th June 1894^c on the subject of sepoys of the British Army. A further point was then referred regarding the jurisdiction of Hyderabad Courts over members of the Department who were paid by His Exalted Highness' Government and were therefore servants of that Government and the Government of India in letter No. 370-I.A., dated 9th February 1898 ruled that His Exalted Highness' Courts would have jurisdiction over such persons provided arrangements were made to provide against their efficiency while on duty being impaired. The point as regards other members of the Department was amplified in a demi-official letter dated 26th September 1898 in which it was stated that the rule barring His Exalted Highness' jurisdiction was subject to the exceptions specified in letter No. 1955-I., dated 9th June 1894^d and that in the event of an offence being committed by a member of the Thagi and Dakaiti Department (or any Government servant) in Hyderabad in his private capacity the Government of India would be prepared to decide on the merits of the case whether or no jurisdiction should be waived. Later the Minister put forward the claim that His Exalted Highness' Government have always had jurisdiction over any Native Indian committing an offence

a. E. P. 17.
b. E. P. 56.
c. E. P. 42.
d. E. P. 42.

in Hyderabad whether or no he was a servant of the British Government. In noting on this reference was made to Section 22 of the Indian Councils Act (24 and 25 Vic. cap. 67) and the case was referred to the Government of India from whom however no reply was ever received.

The principle having been made clear that Government servants are treated as on a par with sepoys, it is evident that any modifications introduced into the policy in respect of the latter will apply *pari passu* to the former. Thus in 1910 when the policy detailed in E. P. 84 was in force in respect of sepoys it was remarked^a that in view of E. P. 56 read with E. P. 84 jurisdiction is not conceded where the offence is committed by a Government servant while not on leave in State territory unless a special concession is made. As an instance of such a concession in the following year^b a police constable of the Residency Bazaars Police was arrested by the City police for being, while merely "off duty", concerned in a drunken brawl. The First Assistant Resident remarked that though we could demand his surrender we should not do so unless we had reason to suppose that he would not get a fair trial in the City. No doubt the trivial nature of the offence and the fact that the man was employed in the Residency Bazaars, as well as the fact that the offence was committed in his private capacity, were taken into account in coming to this decision.

The existing practice is concisely summed up in a correspondence of 1913.^c The Government of India wrote that jurisdiction over British Subjects and Europeans and Americans is inherent in the Paramount Power and in the case of all Government servants criminal jurisdiction is save in exceptional cases exercised exclusively by the British Government. They suggested that Indian servants of the British Government lent to the State should as a rule be tried by the State Courts with a right of representing their case if aggrieved to the Political Officer, and invited an opinion on the suggestion. In reply it was stated that although His Exalted Highness' Government admitted the right of the Paramount Power certain concessions had been made. Jurisdiction over Indian servants of Government was governed by the orders of Government in Foreign Department letter No. 370-I.A., dated 9th February 1898^d and No. 1389-I.A., dated 18th April 1905.^e The question of Indian servants of Government lent to the State had never been raised but as jurisdiction over Europeans and Americans^f had been permitted to Native States it would be inadvisable to lay down restrictions and the procedure suggested by the Government of India was that which would in practice be adopted.

a. E. P. 113.

f. E. P. 123.

g. E. P. 142.

h. E. P. 56.

i. E. P. 84.

j. *Vide* Europeans and Americans.

Between 1912 and 1914 an instructive series of cases arose in which the question was thoroughly discussed: In the first case one Tipanna,^k a British postal official, committed an offence against the Indian Post Office Act at Gulbarga. The Minister was asked to surrender the accused person to the Superintendent of the Residency Bazaars for trial and no *prima facie* evidence was supplied on the ground that being a servant of the British Government His Exalted Highness' Courts could not try the man. The Minister surrendered as a special case, asking for reciprocity, but this was of course refused. The Minister then while admitting the Paramount Power of the British Government over their own servants said that the real question was how in the absence of any agreement they were to secure the surrender of such a man if the offence was not extraditable. This he said could only be secured as a matter of comity and hence the request for reciprocity.

At the same time the question arose of the extradition of one Shaikh Muhammad,^m a sorter in His Exalted Highness' Mail service. He was charged with the theft of a currency note and although the offence was committed in railway limits His Exalted Highness' Government was invited to apply for his surrender in order to serve the ends of convenience. His Exalted Highness' Government citing Tipanna's case asked for his surrender without *prima facie* evidence, but this was refused and the man was eventually released.

Following on this in 1913 one Rukn-ud-din,ⁿ a British postal official, committed an offence against the Indian Post Office Act at Gulbarga and the case being on all fours with Tipanna's case His Exalted Highness' Government surrendered him without *prima facie* evidence, stating that they intended to make certain representations as regards reciprocity. This representation was made in 1914 and proposed the reciprocal extradition of postal servants of either Government without *prima facie* evidence. The Minister remarked (i) that a British ^{ice committed} ~~within Br~~ ^{ness' Post} Office Act and ^{Office Act}

not being an offence in Hyderabad it was unlawful to arrest persons charged with such an offence in Hyderabad. The First Assistant Resident remarked that as Paramount Power the Government of India have reserved exclusive jurisdiction over their own servants; to submit *prima facie* evidence would be to constitute His Exalted Highness' Government arbiters as to whether an offence had been committed. His Exalted Highness' Government had no right to reciprocal treatment,

k. E. P. 131.

l. *Ide* Notification No. 1639-I, dated 22nd May 1905, Macpherson, Vol. I, page 216.

m. E. P. 133.

n. E. P. 137.

o. E. P. 151.

although it might be granted as a matter of policy or convenience. The Resident referring to Tipanna's case remarked that in his opinion the view we then took was wrong and based on a confusion of thought which mixed a question of the law of procedure with one of substantive law. If we submitted evidence in a case of murder it was not apparent wherein lay the objection to furnishing evidence in the case of a postal offender; in the case of a refusal we could in the last resort demand surrender as an act of State. It was true as the Minister pointed out that there was no machinery for the arrest of postal offenders and for bringing them to the Courts empowered to try them, and experience showed that it was in our interests to do more than the Treaty requires to supply the missing machinery. In the event the Minister was informed that the Resident was prepared in the interests of justice to agree to a reciprocal arrangement for the surrender of offenders against the Post Office Acts, the arrangement being confined in our case to offenders found in the Administered Areas, unless the offence amounted to an extraditable offence when surrender could be procured from British India. But the ordinary procedure of supplying *prima facie* evidence should be followed. The Minister in acknowledging this stated that His Exalted Highness' Government laboured under a similar difficulty in the case of offenders against the Indian Post Office Act who after committing an offence in British India escaped into Hyderabad.

It appears that this arrangement although making some concession to His Exalted Highness' Government leaves a balance of advantage on the side of the British Government, for while the British Government undertake to surrender persons who commit an offence against His Exalted Highness' Post Office Act in the Administered Areas^p or after committing such an offence are found in the Administered Areas, the British Government are now in a position to secure surrender in corresponding cases from the whole of Hyderabad by a simple method which screens an abnormal demand behind the normal procedure. His Exalted Highness' Government do not care to be reminded of the Paramountcy of the British Government and by making this small concession it is now possible to some extent to avoid what is to them so unpleasant a topic.

Nevertheless it is well to remember that whenever the British Government require the surrender of one of their own servants such a demand is in substance an act of State not based upon the Treaty^q but upon the inherent right of the Paramount Power. In the case of a refusal the heavy artillery would have to be brought into action and a point blank demand made without any corresponding concession

p. Where the Extradition Act does not apply *Vide* Macpherson, Vol. I, page 225.

q. Which only provides for the surrender of persons charged with committing an offence within the territories of the Government making the requisition.

of reciprocity. The arrangement is comparatively limited in its scope as it only applies to offences against the Indian Post Office Act. Should it be necessary to require the surrender of a Government servant for an offence against any other Act the same difficulties would doubtless be encountered, although if *prima facie* evidence were submitted and the case happened to be extraditable His Exalted Highness' Government would possibly ignore the fallacy and surrender as under the Treaty.*

It is submitted that some confusion has arisen in the past through an improper understanding on the part of His Exalted Highness' Government of the phrase "exclusive jurisdiction". The Minister in his letter No. 1414, dated 15th June 1914, states that a British Magistrate cannot adjudicate upon an offence committed in British jurisdiction against His Exalted Highness' Post Office. His Exalted Highness' Government have in the same way as have the British Government in committing an offence against the Indian Post Office Act in Hyderabad. The cases are however by no means parallel. If a subject of the Nizam commits an offence in Hyderabad and escapes into British India His Exalted Highness' Courts alone have jurisdiction and if the offence is extraditable the man will be surrendered. But if a Native Indian subject of His Majesty commits in Hyderabad an offence which violates both the British and the Hyderabad codes he is subject in the nature of the case to two jurisdictions. He has offended against the law of Hyderabad and he has also offended against the law of British India which he carries with him as his personal law into Hyderabad. Now of these two jurisdictions one, that of His Exalted Highness' Courts, is excluded by the rule that the Paramount Power can legislate for its own subjects within the limits of a Native State. No doubt in the instance given His Exalted Highness' Courts would be permitted to exercise their jurisdiction but this is a concession and such jurisdiction may perhaps be termed "conceded". It is therefore perhaps well to keep in mind when using the term "exclusive jurisdiction" that it means a special jurisdiction which ousts or excludes an alternative jurisdiction.

The general distinction here suggested will not strictly apply where the offence against the personal law of the offender is not an offence against the law of the State, but as it is just here that confusion is apt to creep in the distinction is none the less useful. For in 'Tipanna's' and 'Rukn-ud-din's' cases the demand for surrender was

x. Which lies in the fact that the offence was committed in Hyderabad.

s. *Ibid* E. P. 131.

t. E. P. 151.

u. *Ibid* Native Indian subject.

v. E. P. 131.

w. E. P. 137.

based, not as His Exalted Highness' Government seemed to wish to suggest upon the argument that as the Indian Post Office Act does not apply in Hyderabad the man would otherwise escape punishment, but upon the fact that the Paramount Power wished to exercise its inherent jurisdiction.

One other case remains to be considered, that of Abdul Latif in 1916. Abdul Latif,² a Bellary police constable on plague duty at Rai-chur station, was alleged to have committed while "off duty" an offence in Hyderabad territory. The First Assistant Resident called attention to the principle that British officials while on duty should not be liable to interference with the conduct of their duties, but the Resident remarked that this principle did not apply as His Exalted Highness' Government did not claim to try the man without first furnishing us with *prima facie* evidence; the case was not comparable to that of a sepooy arrested while on duty. The matter was referred to the Government of India, attention being called to the orders of Government contained in letters Nos. 370-I.A., dated 9th February 1898¹ and 1889-I.A., dated 18th April 1905.² The Resident wrote "It is understood however that whilst exclusive jurisdiction has been retained by the British Government over their Indian servants in respect of offences committed in Native States while on duty they are prepared to decide on the merits of each case in which an offence is alleged to have been committed by a Government servant in a Native State in his private capacity (e.g., while not on leave but when "off duty") whether jurisdiction should not be waived". In a demi-official letter of the same date reference was made to the Government of India's demi-official letter of 26th September 1898¹ and the words there occurring "in his private capacity" were presumed to be equivalent to the phrase "off duty". The Government of India ruled that the case was one in which extradition might reasonably be granted provided the Madras Government had no objection, and as the Madras Government agreed the man was surrendered.

The orders of Government contained in letter No. 1389-I.A., dated 18th April 1905 did not recognise the distinction between offences committed while on duty and those committed while "off duty", but this case together with the other orders to which reference has been made make it clear that in considering whether the discretion of handing over an offender to a Native State for an offence committed while not on leave should be exercised the fact that the man was "off duty" at the time will operate in favour of surrender.

¹ E. P. 169.

² E. P. 56.

³ E. P. 81.

⁴ E. P. 54.

JURISDICTION UNDER SECTIONS 179, 180, CRIMINAL PROCEDURE CODE, ALTERNATIVE.

It sometimes happens that Courts both in British India and Hyderabad have jurisdiction by reason of Section 179 or 180, Criminal Procedure Code. In such cases there are normally insufficient grounds for asking for extradition from Hyderabad unless special circumstances exist. His Exalted Highness' Government have always displayed a jealous regard for their own jurisdiction in this matter, even where surrender would be a matter of convenience,^a and it would probably be unwise to press a case of this nature^b when adequate justice can equally well be secured in His Exalted Highness' Courts.

^a E. P. 95, 97, 102: cf. however E. P. 93, 147.
^b E. P. 143.

NATIVE INDIAN SUBJECT.

The nature of the right of the Paramount Power to bring its own subjects to trial in its own Courts is indicated under the head of Paramountcy. In the case of Native Indian subjects of the King however jurisdiction has been entirely conceded to His Exalted Highness' Government and the recorded cases fail to disclose a single case where the Paramount Power has insisted on exercising its right solely on the ground that the accused person was a Native Indian subject. We have even gone a step further. Although the Treaty^a which is based on the principle of reciprocity states that neither Government shall be bound to surrender its own subjects in practice we regularly forego the right of trying in British Courts Native Indian subjects who after committing an offence in Hyderabad are found in British India^b and on the requisition of His Exalted Highness' Government surrender such persons, the only condition being that some special reasons are shown for making the requisition. Even this condition has become little more than a formality, it being only necessary to show that surrender will tend towards the convenience of the parties.

This practice is at least as old as 1890^c when the First Assistant Resident noted "where the surrender is likely to facilitate the trial or otherwise further the ends of justice the Nizam's Government may generally be asked to surrender its own subjects and requests under similar circumstances from the Nizam's Government for the surrender of British subjects may also be entertained." Similarly a Resolution of the Bombay Government of 1890^d stated "It may be remarked that for the furtherance of justice an understanding between the Resident and the Nizam's Government has sprung up under which the Resident exercises his option in certain cases so as to give a warrant for the extradition of British subjects". Again in 1891^e the Resident after stigmatising the provision that neither party shall be bound to surrender its own subjects as old-fashioned and opposed to the only true and sound principle that an offence should as a rule be tried where it was committed added that he did not recollect a case in which on the Minister's pressing for the surrender of a British subject charged with committing an offence in the Nizam's territory his application had been refused; he had no doubt that except when some special reason existed such applications would always be acceded to.

a. Appendix A.

b. *Ido* however certificate under Section 183, C.P.C.

c. E. P. 29.

d. E. P. 30.

e. E. P. 33.

If Native Indian subjects found in British India after committing an offence in Hyderabad are surrendered to His Exalted Highness' Government for trial it follows a fortiori that extradition will not be granted by His Exalted Highness' Government where such persons are in Hyderabad even where circumstances exist which would give the British Courts jurisdiction under Section 179.^f Criminal Procedure Code, and even though such surrender would tend to the convenience of the parties. One such case^g indeed exists, but it is only fair to surmise that the point was overlooked by His Exalted Highness' Government and the case can hardly be taken as a precedent.

f. E. P. 100.

g. B. P. 93.

h. E. P. 147.

NATIVE STATES.

Extradition between one Native State and another is purely a matter of comity and the principles which should govern it are thus described by the Resident in 1906:—"Extradition between any two Native States is a matter of comity lying altogether beyond the scope of a treaty which is binding only on the contracting parties. The surrender of criminals between Native States is neither more nor less on either side than an act of State entirely independent of any agreement and though it may perhaps be convenient to take the Extradition Treaty with the Government of India as a general guide in dealing with such cases as may arise it affords no reason why extradition should not be granted independently of its provisions when circumstances appear to indicate that the grant of it is not inexpedient. There is the more reason why the provisions of the Treaty should not be too closely followed in cases to which it does not apply in that the Treaty itself is nearly forty years old and in its recent proceedings the Government of India have taken a wider view of their obligations than that generally accepted in 1867. It seems therefore to the Resident that in their dealings with one another the Government of Native States might well take a larger view of their powers and obligations than that which is taken by the Hyderabad Extradition Treaty, especially in cases like the present in which the offender whose extradition is asked for is a subject of the State making the request; for nothing is more characteristic of any Government than that it should be lenient to its own subjects and severe to foreign criminals. The more lenient the Government is to its own subjects the more persons who would be liable to extradition from British India will tend to seek shelter in States which follow a narrower policy in the matter."

It has been a long-standing practice for the Hyderabad State to grant and obtain surrender with other Native States and cases of surrender are recorded between Hyderabad and Bhavnagar and Junagadh in 1886,^a Bhopawar Agency in 1887^b and Akalkote in 1892.^c It is proposed here to examine the principles governing such surrender under the following heads:—

- (a) States with which extradition is arranged.
- (b) Offences for which surrender is arranged.
- (c) Persons who are surrendered.

a. E. P. 87.

b. E. P. 4.

c. Long file of 1887 (not in E. P.)

d. E. P. 43.

A.—States with which extradition is arranged.

In 1898* the Jaora Darbar (Malwa Agency) requested the surrender from Hyderabad of a man charged with murder and the Hyderabad Government laid down the important principle that though His Exalted Highness' Government are not bound by any treaty to surrender accused persons to Native States yet His Highness had commanded that in future demands for extradition from Native States should be granted, provided they are received through the Resident and are made in conformity with the provisions of the extradition treaty between the British Government and the Hyderabad Government and on the understanding that similar requisitions from His Exalted Highness' Government would be acceded to on the same conditions. This principle has been widely followed since and definite agreements have been arrived at for mutual surrender between Hyderabad and Alwar,¹ Baroda,² Indore,³ Jodhpur,⁴ and Mysore.⁵ The usual form of such

"In future the surrender of accused persons
 ass' Government and the.....State will be
 down in the Extradition Treaty between
 the Government of India and His Exalted Highness' Government.
 The Extradition of such accused persons as are required by the.....
 State will be arranged in accordance with His Exalted Highness'
 Extradition Act and similarly those whose surrender is required by
 His Exalted Highness' Government will be dealt with under the
 Extradition Act of the Government of India."

In the case of Mysore the agreement goes further and provides for the surrender of persons charged with offences susceptible of extradition under the law in force in British India or punishable with imprisonment for two years or more under the laws in force in either State relating to Railways, Post Office and Telegraphs.

A subsidiary agreement* has been made with the Jaipur and Alwar Darbars which reads as follows:—

"In future when Minas of the Jaipur and Alwar States are surrendered to His Exalted Highness' Government they will be made over after their release from prison to the Darbar to which they belong to be kept under surveillance at their homes; and it is understood that in return the Jaipur and Alwar Darbars will resurrender any member of Criminal Tribes to His Exalted Highness' Government, a list of which is hereto annexed."

c. E. P. 60.
 f. E. P. 93.
 g. E. P. 107.
 h. E. P. 129.
 i. E. P. 115.
 j. E. P. 90.
 k. E. P. 138.

Apart from these States with which a more or less formal agreement has been concluded surrender is freely arranged with other States in accordance with the principles enunciated above,¹ and cases are recorded of surrender between Hyderabad and Akalkote,² Chhattisgarh,³ Jaipur,⁴ Kathiawar States,⁵ Kolhapur,⁶ Rampur,⁷ Savanur,⁸ and Travancore.⁹

B.—Offences for which surrender is arranged.

The form of extradition agreement quoted above is clearly intended to assimilate surrender between Hyderabad and other Native States to surrender between British India and Hyderabad, providing as it does that the principles of the Extradition Treaty of 1857 should apply, the procedure being that of His Exalted Highness' Extradition Act in cases of surrender from Hyderabad and the Government of India Extradition Act in cases of surrender to Hyderabad. It appears however from the correspondence of 1906^a regarding the surrender of Obhaturbhuj from Hyderabad to Baroda that the intention of the Resident was to induce the Hyderabad Government to adopt in their dealings with other Native States a wider schedule of offences than that of the Treaty; in that very case indeed His Exalted Highness' Government agreed to surrender for an offence of cheating which was not entered in the Treaty.⁷

In practice we find that extradition has been freely arranged in accordance with the Schedule to the Extradition Act both before and since the policy of entering into formal agreements made its appearance. Thus surrender has been granted for offences of cheating,⁷ concealing a kidnapped person,⁸ criminal breach of trust,⁷ escape from lawful custody⁷ and kidnapping,⁸ while in the case of Mysore surrender has even been granted for an offence under the Railway Act.^b It may be assumed therefore that generally speaking the Hyderabad Government would be willing to grant surrender on terms of reciprocity to other Native States for any offence for which surrender is granted to British India.

1. L. P. 60.

m. E. P. 43, 117.

n. E. P. 86.

o. E. P. 101.

p. E. P. 4, 133, 160, 161.

q. L. P. 49, 78, 119.

r. E. P. 140.

s. E. P. 130.

t. E. P. 154.

u. E. P. 87.

v. Although His Exalted Highness' Government agreed to its inclusion two years later. *Ide* E. P. 88.

w. E. P. 87.

x. E. P. 93. *Ide* however Appendix A, which shows that the contracting parties agreed to regard cases of kidnapping as included in the Treaty.

y. E. P. 101, 137, 132, 160.

z. E. P. 83, 86, 130.

a. E. P. 43, 154.

b. E. P. 90.

C.—Persons who are surrendered.

The question of the nationality of the person to be surrendered has only been specifically raised in a few cases but these will be sufficient to show that here also His Exalted Highness' Government follow the practice in respect of British India and surrender their own subjects when special reasons exist for so doing. Thus in 1910^c His Exalted Highness' Government refused to surrender one of their own subjects to Akalkote but when it was pointed out that some of the accused persons and many of the witnesses were not Hyderabad subjects they agreed to surrender as a special case. Similarly where His Exalted Highness' Government sought extradition from the Rajkote^d and Junagadh^e Darbars of subjects of those Darbars they gave special reasons for applying.

In a case of 1905^f a British subject was surrendered from Hyderabad to Kolhapur without comment but a year later when the question arose of the surrender of a British subject from Hyderabad^g to Baroda His Exalted Highness' Government wrote that as the man was a British subject he could not be surrendered but they would gladly surrender him to the British Government. On this the Resident wrote "It appears to the Resident that as his rendition would be purely an act of comity the fact of his being a British subject does not affect the right of His Highness the Nizam's Government to surrender him to the Baroda Darbar should they so desire and Mr. Bayley would be glad to learn the grounds on which the opinion expressed in your letter is based. Ohhattarbhuj would certainly be surrendered by the British Government under the Extradition Act if he were found in British India and it seems undesirable that he should escape trial on the charge brought against him in Baroda merely because he has sought refuge in another Native State".

To this His Exalted Highness' Government replied that they had not deemed it expedient to surrender the man who was a British subject to a foreign State without the intervention of the British Government but as the Resident had no objection His Exalted Highness' Government had no hesitation in issuing the required orders. Regarding the warrant necessary to cover transit through British India; *vide* Warrant.

c. E. P. 117.
d. E. P. 160.
e. E. P. 161.
f. E. P. 78.
g. E. P. 67i

NIZAM'S SUBJECTS. •

The Treaty^a contains a provision to the effect that neither Government shall be bound to surrender its own subjects, but in practice this provision has been regarded as obsolete and both Governments now surrender freely their own subjects provided some special reason is shown for making the requisition, such as the convenience of the parties. In 1887 after refusing^b to surrender one of their own subjects in one case His Exalted Highness' Government subsequently granted^c surrender in another, and in 1890^d they again granted surrender of one of their own subjects where it was shown that such surrender would conduce to the ends of justice. In the same year^e the First Assistant Resident noting on the practice wrote "Where the surrender is likely to facilitate the trial or otherwise further the ends of justice the Nizam's Government may generally be asked to surrender its own subjects and requests under similar circumstances from the Nizam's Government for the surrender of British subjects may also be entertained." In that year also the Bombay Government issued a resolution^f in which they stated "It may be remarked that for the furtherance of justice an understanding between the Resident and the Nizam's Government has sprung up under which the Resident exercises his option in certain cases so as to give a warrant for the extradition of British subjects. In the same way it is understood that the Government of His Highness is as ready in similar cases to surrender his subjects as the Resident has been to obtain the surrender of British subjects."

In 1891^g however His Exalted Highness' Government showed a reluctance to go beyond the Treaty even where special reasons were shown, and the Resident wrote that though they were undoubtedly within their rights in refusing yet the provision of the treaty was old-fashioned and opposed to the only true and sound principle that an offence should as a rule be tried where it was committed and where the evidence was readily available and was calculated to lead to a great deal of trouble and expense and failures of justice. This right had of late frequently been waived both by the Nizam's and British Government and the Resident was under the impression that there was a sort of understanding that it should as a rule not be insisted upon. He further expressed most strongly his opinion that each side ought

a. Appendix A.

b. L. P. 6.

c. E. P. 9.

d. E. P. 24.

e. E. P. 29.

f. No. 7437, dated 1st December 1890: *Vide* E. P. 30.

g. E. P. 33.

to waive the provision in the Treaty and surrender its own subjects for offences committed in the territory of the other except when some special reasons of convenience or otherwise indicated an opposite course. In the end the Minister agreed to surrender.

In 1895^b His Exalted Highness' Government against displayed an inclination to resile from the arrangement and although it was pointed out that in E. P. 33 Sir Asman-Jah had agreed to conform to the then existing practice surrender in these two cases was only granted as a special case and "not in pursuance of a general policy." Subsequently however the arrangement seems to have received general recognition and little trouble has recently been encountered. But in 1908^c it was necessary to direct the attention of Bombay Magistrates to the condition that in asking for the surrender of Nizam's subjects special reasons should be given and the Bombay Government issued Resolution No. 1472, dated 25th February 1909, on the subject. In the absence of such special reasons surrender would probably be refused,^d but the fact that several persons are being tried together some of whom are British subjects and others Nizam's subjects is a sufficient reason.^e

It may be noted that His Exalted Highness' Government are prepared to surrender their own subjects to Native States on the same terms.^f

b. E. P. 50 and 51.

c. E. P. 103.

d. E. P. 135.

e. E. P. 165.

f. E. P. 117. *Fide* Native States,

PARAMOUNTCY.

The British Government as Paramount Power in India possesses certain incidents of Paramountcy which can conveniently be considered under one head. As instances of this Paramountcy may be quoted the obligation of Native States to surrender deserters from the British Army and the limited jurisdiction which they possess over sepoys of the British Army.^a It has also been laid down as a general principle that no law or treaty is required in order to enable the Government of India to demand the extradition of any person from a Native State. There are however certain well-defined limits within which this power is liable to be exercised but behind all extradition proceedings lies this little-used but powerful reserve of strength by means of which in the last resort extradition can be demanded as an act of State.

It is here proposed shortly to discuss the general powers of jurisdiction which the Governor-General in Council possesses by virtue of Statute over Government servants, European British subjects and Native Indian subjects of His Majesty within Native States. The limitations which have been imposed upon the exercise of these powers as a concession to the Hyderabad State are specified under the appropriate heads.^b

In Maoperson, Volume VI, Appendix I will be found a list of the Statutes in force in Native States in India. In particular the following require to be noticed :—^{aa}

Section 22, Indian Councils Act (24 and 25 Vic. cap. 67), which empowers the Governor-General in Council to make laws and regulations for all servants of the Government of India within the dominions of Princes and States in alliance with His Majesty.

Section 3, Indian High Courts Act (28 and 29 Vic. cap. 15), which empowers the Governor-General in Council to authorise and empower High Courts to exercise jurisdiction in respect of Christian subjects of His Majesty resident within Native States.

Section 1, Government of India Act (23 and 29 Vic. cap. 17), which empowers the Governor-General in Council to make laws and regulations for all British subjects of His Majesty, whether in the service of the Government of India or not, within the dominions of Native States.

a. *Vide* Deserters and Sepoys of the British Army.

b. *Vide* Government servants, Europeans and Americans and Native Indian subjects.

aa. *Now* Government of India Act, 1915 and 1916.

Section 1, Indian Councils Act, 1869 (32 and 33 Vic. cap. 98), which empowers the Governor-General in Council to make laws and regulations for Native Indian subjects of His Majesty without and beyond as well as within the territories under the dominion of His Majesty, and

The Foreign Jurisdiction Act (53 and 54 Vic. cap. 37), which provides for the exercise of His Majesty's jurisdiction outside His dominions.

The machinery for setting in motion these extraterritorial powers is provided by the Indian (Foreign Jurisdiction) Order in Council, 1902,^c issued under the Foreign Jurisdiction Act, which gives the Governor-General in Council power to exercise jurisdiction on behalf of His Majesty and to delegate his powers and jurisdiction to any servant of the British Indian Government as he shall think fit. Further in order to carry the Order into effect he may make such rules and orders as may seem expedient, and in particular for determining the law and procedure, for determining the persons who are to exercise jurisdiction and their powers, for determining the Courts, &c., by whom and regulate the manner in which any jurisdiction auxiliary or incidental to or consequential on the jurisdiction under the Order is to be exercised in British India.

Macpherson, Volume VI, Appendix II, gives a list of the Acts of the Governor-General in Council which are in force generally in all Native States or contain special provisions relating to Native States. This list contains that body of law which a person subject to the extraterritorial jurisdiction of the Governor-General in Council carries with him as his personal law even when he passes beyond the limits of British India. To take an example, Sections 3 and 4 of the Indian Penal Code provide that that Code shall apply to all Native Indian subjects of His Majesty in any place without and beyond British India, and to any other British subject and to any servant of the King, whether a British subject or not, within the territories of any Native Prince or Chief in India. Thus supposing a Native Indian subject of His Majesty commits murder in Hyderabad, he commits an offence, not only against the laws of the State, but also against the Indian Penal Code, and he can be tried for it by a British Indian Court in the same manner as if he had committed the offence in British India. Similarly the law of procedure is made applicable to him by Sections 188 and 189 of the Criminal Procedure Code.

It will be observed that Section 188, Criminal Procedure Code, contains a proviso to the effect that no such charge shall be inquired into in British India unless the Political Agent certifies that in his

^c. Macpherson, Volume VI, Appendix III.

opinion the charge ought so to be inquired into; and further that any proceedings taken under the Section shall be a bar to further proceedings under the Foreign Jurisdiction Order in Council in respect of the same offence in any territory beyond the limits of British India. This brings us to a consideration of the alternative procedure which is provided for dealing with such cases outside British India. It will be well however at the outset to distinguish this from what may be called the conceded jurisdiction of the ordinary State Courts. Thus ordinarily a Native Indian subject of His Majesty committing an offence in Hyderabad would be tried by the Hyderabad Courts and no question would arise of his trial either by the special machinery now to be detailed or by the Courts of British India.^d Such jurisdiction however is merely exercised by Native States as a concession and behind it lies the power of the Governor-General in Council to demand extradition in order that he may exercise his own jurisdiction. The nature of these concessions is, as already stated, indicated under the appropriate heads.

The machinery of this alternative procedure is provided by means of Notifications issued by the Governor-General in Council in exercise of the powers conferred on him by the Indian (Foreign Jurisdiction) Order in Council, 1902. Thus Notification No. 1863-I.A., dated 13th May 1904^e directs that the criminal law and law of procedure for the time being in force in British India shall for the purposes of any power or jurisdiction exercised under that Order apply to all subjects of His Majesty, while Notification No. 3089-I., dated 18th September 1890^f introduces a modification of the Criminal Procedure Code regarding the power of the First Assistant Resident to refer and transfer cases to Justices of the Peace.

With regard to persons other than European British subjects Notification No. 1639-I., dated 22nd May 1885^g provides that within the limits of His Exalted Highness the Nizam's territory in all cases in which the Governor-General in Council may lawfully exercise powers within such territory the Superintendent, Residency Bazar, shall exercise the powers of a District Magistrate; the First Assistant Resident those of a Court of Sessions, and the Resident those of a High Court, in respect of all offences over which magisterial jurisdiction is exercised by the Superintendent of the Residency Bazar or the jurisdiction of a Court of Sessions by the First Assistant Resident. The First Assistant Resident is further empowered to take cognisance of an offence without the accused person being committed to him. Similarly the Cantonment Magistrate, Aurangabad, is given the powers of a Magistrate of the First Class.^h

d. *Fide* Native Indian Subject.

e. Macpherson, Volume VI, Appendix IV.

f. Macpherson, Volume I, page 215.

g. Macpherson, Volume I, page 215.

h. Notification No. 2370-I.A., dated 23rd June 1897, Macpherson, Volume I, page 217.

Over European British subjects in Hyderabad the High Court of Bombay¹ exercises the jurisdiction of a High Court and Justices of the Peace are directed to commit such persons for trial to that Court.¹

Justices of the Peace are invested with all the powers of a First Class Magistrate in regard to European British subjects and are also empowered to hold inquests.² The following persons¹ being European British subjects have been appointed Justices of the Peace in the State of Hyderabad:—the First Assistant Resident, the Superintendent, Residency Bazaars, the Second Assistant Resident, and the Cantonment Magistrates of Secunderabad and Aurangabad:

Special provision is also made for the trial of European British subjects in Notification No. 579-D., dated 26th January 1917^m which constitutes the Special Magistrate (being a European British subject) in the territories of His Exalted Highness the Nizam to be a Justice of the Peace and directs that the Courts to which he shall commit for trial shall be (a) the High Court at Bombay in the case of all European British subjects of His Majesty, and (b) the Resident in the case of all Europeans and Americans not being European British subjects.

PERIOD OF DETENTION PENDING EXTRADITION.

Under Section 10 of the Extradition Act a person arrested on a warrant issued in British India under that Section in connection with an offence committed in a Native State shall not be detained in custody pending extradition for a longer period than two months, and His Exalted Highness' Government on their part insist on a similar provision regarding persons to be extradited to British India. An application for detention beyond the two months' period can only be granted with the sanction of the Local Government and would normally be rejected*. The mere fact however that a man has been arrested and released in accordance with the two months' rule is not a bar to his re-arrest if found.^b

a. E. P. 63 and 133.

b. E. P. 63 and 133.

POLICE.

Under the old Criminal Procedure Code (Act X of 1882) there was no procedure by which the police in British India could arrest without warrant a person charged with having committed an extraditable offence and in a case of 1891^a it was held that such arrest was illegal. Section 54 (7) of the Criminal Procedure Code as it now stands however has legalised such arrest and the police of British India should where requisition is made by the police of Hyderabad at once arrest the person pointed out, as is done in converse cases by the police of Hyderabad. In 1902^b a British police constable instead of so arresting took the informant before a Magistrate in order that his statement should be recorded and a warrant issued. The matter was brought to the notice of the Bombay Government who issued Resolution No. 3578-J., dated 30th June 1903 directing that the provisions of Section 54 (7), Criminal Procedure Code, should be strictly complied with.

The police of British India have no authority to arrest persons in Hyderabad^c nor can they hand over a person arrested in their jurisdiction in the absence of extradition proceedings.^d The proper course is for the police after arrest to take the offender before the nearest Magistrate in their jurisdiction and obtain a warrant under Section 10, Extradition Act, leaving it to the Magistrate to report the case with a view to extradition proceedings being taken.

Similarly the custody of the Nizam's police in British India or the British Police in Hyderabad is illegal.^e If it is necessary for the Nizam's police to recover property in British India on information received from persons in their custody the proper course is for them to obtain all the available information and ask the police in British India to recover the property.

As to the value of a police report as *prima facie* evidence *vide* Evidence.

As to the arrest of sepoys of the British Army in Hyderabad *vide* Sepoy of the British Army.

As to the case of a warrant issued to legalise the passage through British India of a person extradited from one Native State to another *vide* Warrant.

a. E. P. 86.

b. E. P. 72.

c. I.E.P. 6, 12.

d. I.E.P. 12, 15.

e. I.E.P. 136.

PRISONER.

There was in the past a good deal of confusion in the matter of the extradition of persons already undergoing a sentence of imprisonment. Thus in 1889^a in the case of a man who had been sentenced to undergo 8 years' rigorous imprisonment the Minister was informed that he would be surrendered if required on the expiry of his sentence. In 1890^b where the surrender to British India was required of a person undergoing trial at Raichur His Exalted Highness' Government consented to his surrender after the trial was over and before he should undergo sentence. Again in 1892^c a Secunderabad convict who had been transferred to Amraoti and whose surrender was required by His Exalted Highness' Government was retransferred to Secunderabad, produced for trial before the City Court, then returned to Secunderabad Jail whence after serving out his sentence he was surrendered to Hyderabad in order to undergo his sentence there. In that year^d however a doubt was felt as to the legality of surrendering to Hyderabad a convict undergoing imprisonment in a British jail and a reference was made to the Government of India. They replied that in the particular case under reference as the term of imprisonment would have expired or nearly so before the trial was concluded there was no objection to surrender. They added "On the general question it is not clear whether on the retransfer of such persons to British territory they can be lawfully detained for the unexpired portion of their sentences. In these circumstances it is obviously desirable that every case should be treated on its merits, regard being had to the nature of the offence for which the offender is undergoing punishment, the term of imprisonment as yet unexpired, the nature of the offence for which surrender is demanded and the probability or otherwise of his being convicted for that offence."^{dd}

This legal obstacle continued to be encountered* until the passing of the present Extradition Act (XV of 1903), Section 11 of which says that a person undergoing imprisonment in British India shall only be surrendered on condition that he is resurrendered at the termination of the trial; and that on the surrender of such a person his sentence in British India shall be deemed to be suspended and shall revive on the date of resurrender. The difficulties previously experienced were thus removed.

a. E. P. 11.

b. E. P. 18.

c. E. P. 40.

d. E. P. 41.

dd. These words are quoted in the Political Officers Manual, page 49, but for obvious reasons they do not now apply.

e. E. P. 68.

Section 11 (1) lays down that surrender should be subject to the condition of resurrender and His Exalted Highness' Government insist on a similar condition in cases of surrender from Hyderabad. Where through oversight this condition is omitted resurrender can be obtained as if the condition had been inserted provided the man has not been released.^f If however he has been released it would be necessary to issue a warrant under Section 7, a copy of the conviction warrant and a descriptive roll being sufficient by way of *prima facie* evidence.^g

The normal practice is thus to surrender with a condition of resurrender after trial. As a matter of convenience however where the expiry of the sentence is close surrender is sometimes postponed until expiry, no condition of resurrender being then necessary.

The Prisoners' Act can in the nature of the case have no application.^h

Section 11 does not apply to the case of a person undergoing imprisonment in lieu of security under the Criminal Procedure Code, as there is here no "offence" or "conviction". The only course in such cases would be to postpone surrender until the expiry of the imprisonment.ⁱ Such a course would however seldom be necessary, as all that is necessary is that such a person should not be set at liberty before the period for which he has been ordered to give security expires.^j If such period is likely to expire either before the trial is over or before the subsequent sentence it any expires immediate surrender would seem desirable. Such cases are very parallel to those of ordinary convicts before the passing of the present Extradition Act, and in deciding whether or no surrender should be granted it would be well to take into consideration the circumstances indicated by the Government of India in the passage above quoted.^k Conditional surrender would appear to be illegal in such cases.

f. E. P. 167.
g. E. P. 149.
h. E. P. 119.
i. E. P. 105.
j. E. P. 111.
k. E. P. 41.

PROCEDURE.

Where, as in the case of Hyderabad, a Treaty exists it is open to the State concerned to elect whether in cases of extradition from British India it will be guided by the Treaty or by the Act and Rules thereunder; and Rule 1^a framed under Section 22 says that the Political Agent shall not issue a warrant under Section 7 in any case which is provided for by Treaty if the State concerned has expressly stated that it desires to abide by the procedure of the Treaty.

The Hyderabad State has however definitely agreed to accept the procedure of the Act and an agreement to that effect was passed in 1887.^b Hence so far as Hyderabad is concerned the procedure to be followed in extradition from British India is that of the Act, although the agreement affects nothing but the procedure, the Treaty remaining otherwise intact.^c This was very fully discussed in a correspondence of 1890^d when the Bombay Government issued a Resolution pointing out that the later agreement left the Treaty untouched except as regards procedure. Thus although the Resident might under the Act issue a warrant for the surrender of a British subject charged with offences other than those stated in the Treaty, the agreement of 1887 did not supersede the conditions laid down in Articles 2 and 4 of the Treaty and His Exalted Highness' Government could not demand the surrender of such persons as of right.

The points involved as regards procedure were again discussed in a recent case^e in which His Exalted Highness' Government had been asked to surrender a man without *prima facie* evidence and had in reply made a request for reciprocal treatment. In the notes on the case it was pointed out that in extradition from British India we could not depart from the procedure laid down in the Act and Rules without the orders of the Government of India. Rule 4 requires that the Political Officer shall satisfy himself by preliminary inquiry that a *prima facie* case exists. A reply was given to the Minister to the effect that if a similar case arose when *prima facie* grounds existed for believing the accused to have committed an offence even though special circumstances prevented the formal recording of the evidence of witnesses the Resident would have no objection to advising the surrender of the accused with a view to meeting the ends of justice.

a. Appendix C.
 b. Appendix B.
 c. E. P. 29, 30.
 d. E. P. 30.
 e. E. P. 117.

It would however be understood that such a requisition would only be made in very exceptional circumstances and that special reasons would be given for the non-submission of the usual evidence of criminality.¹

In a still more recent case² certain questions regarding procedure were referred to the High Court of Bombay but for the purposes of the reference it was unnecessary to answer these.

PROPERTY.

Property is surrendered freely on both sides irrespective of its value on the production of evidence. It is a not uncommon fallacy, based probably on Article 4 of the Treaty, that property of less than Rs. 100 in value cannot be surrendered,^a but this appears to be due to a confusion of thought. There is nothing either in the Treaty or in the Extradition Act, which deal with offenders only, regarding the surrender of property. It is surrendered as a matter of convenience or comity,^b the legal sanction for such surrender being found in the provisions of Section 523, Criminal Procedure Code^c on the one hand and Section 491 of His Exalted Highness' Criminal Procedure Code on the other. From this it is clear that the sole arbiter as to whether or no property shall be surrendered is the Magistrate^d who passes the order and not as in extradition cases the Resident or His Exalted Highness' Government as the case may be. It is of course irregular for the police to remove property from outside their jurisdiction without first applying for its surrender.^e

There would seem to be no objection to the surrender of property even in non-extraditable cases^f or where for instance a criminal is caught and punished in one jurisdiction and has disposed of property in another.^g

It is often convenient that property should be temporarily surrendered for purposes of investigation^h before its final surrender is applied for, and the difficulty of producing an abstract of evidence in order to obtain such surrender was in 1903 brought to notice by His Exalted Highness' Government.ⁱ Thereupon the Governments of Bombay and Madras and the Central Provinces Administration were addressed and an arrangement was come to by which the difficulties previously experienced were mitigated.^j In such cases direct correspondence

a. E. P. 134, 133, 159.

b. E. P. 184.

c. Although a doubt has been expressed as to its strict legality, E. P. 76.

d. E. P. 83, 109.

e. E. P. 178.

f. Government of Madras, No. 1059, dated 15th April 1903, to the Central Provinces

Government, in whose jurisdiction the property is found could

g. E. P. 110.

h. E. P. 76.

i. Bombay Government, No. 1059, dated 15th April 1903, to the Central Provinces

Government, in whose jurisdiction the property is found could

j. Government of Madras, No. 1059, dated 15th April 1903, to the Central Provinces

Government, in whose jurisdiction the property is found could

k. Government of Madras, No. 1059, dated 15th April 1903, to the Central Provinces

Government, in whose jurisdiction the property is found could

is permitted with the Magistrate whose order is required. It has however been held by the Bombay Government that even in the case of the temporary surrender of property some evidence is necessary to enable the Magistrate to take action under Section 523, Criminal Procedure Code, although the Magistrate would probably not require an unreasonable amount of evidence.^k

The case of cash and currency notes is somewhat different, as the ordinary principle of law that possession by the taker is no defence against the owner of a chattel whose possession was lost by theft does not apply to the case of a currency note or cash of which the ownership passes by mere delivery.^l This however is subject to the exception that possession does not pass when the money is received *mala fide*.^m It follows that ordinarily cash or currency notes cannot be surrendered in the absence of evidence to show that they were received *mala fide*.ⁿ Where however a note is required merely to complete the evidence it may be surrendered on a condition of subsequent return.^o It is also submitted that a case might occur in which the surrender of money was required in order to give effect to an order under Section 519, Criminal Procedure Code.

k. E. P. 63.

l. E. P. 122.

m. E. P. 174.

n. E. P. 123, 156, 174.

o. E. P. 123.

SEPOY OF THE BRITISH ARMY.

In considering the rather complicated subject of the surrender of sepoys of the British Army it must be remembered that the ordinary law of extradition is overridden by the principle that the Government of India cannot admit the right of a Native State to deprive the Paramount Power of the use of its soldiers while serving with the colours.^a This guiding principle underlies all the rulings on the subject and requires to be borne in mind when any question arises. Two separate questions are really dealt with under this head, namely the jurisdiction of Native States over sepoys and the surrender of sepoys to Native State for trial, but although the distinction is a very real one, in practice the two questions tend to merge into one another and become rather two aspects of one and the same question. Thus although His Exalted Highness' Government would have ipso facto no jurisdiction over a sepoy committing otherwise than on leave an offence in Hyderabad, yet in certain circumstances if his surrender could be granted without detriment to military requirements and is otherwise desirable the bar to their jurisdiction might be removed and the man might be surrendered.^b In other words what we have first to look to is not, as in an ordinary case of extradition, whether the case falls within the four corners of the Extradition Act, but whether or no the jurisdiction of His Exalted Highness' Courts is barred and if it is whether or no the circumstances are such that the bar can and should be removed. If their jurisdiction is not barred or if for sufficient reasons it is conceded then surrender follows as a matter of course.

The principle of Paramountcy above enunciated clearly suggests a distinction between cases in which a sepoy commits an offence while on leave and those in which he commits an offence while serving with the colours, while the latter class can again be sub-divided into cases where the sepoy is "on duty" and those where he is "off duty". This distinction is indicated in the earliest recorded case^c in which one Muhammad Ali Khan, a sepoy of the Aurangabad Court with an offence of desertion while serving with the colours. His deposition was taken by the Aurangabad Court and he was sentenced to his regiment for being kept under surveillance. He was sentenced to one year's imprisonment and his surrender was requested. The General Officer Commanding, Hyderabad Contingent, refused to hand him over remarking that "as he was serving with his regiment at the time the offence if any was committed in the cantonment of Aurangabad and the Taluqdar

a. E. P. 77.

b. E. P. 84, cp. E. P. 169 where a Government servant was surrendered in similar circumstances.

c. E. P. 3.

had no power to try him unless he had been made over for trial by order of the Resident." The Resident for these reasons refused to hand him over and orders were issued by the Hyderabad Government to quash the proceedings. In this case the principle is laid down that where a sepoy serving with his regiment commits an offence even outside the Cantonment he can only be tried within the Cantonment unless made over for trial by order of the Resident.

In 1895^d this question of the jurisdiction of His Exalted Highness' Government over sepoys of the British Army again came up. The Resident addressing the Government of India in paragraph 3 of his letter stated his opinion that no native soldier is amenable to the Nizam's Courts for an offence committed while serving with the colours. He added his opinion that a Native soldier if arrested within State limits "otherwise than on duty" on a charge of an offence committed in such jurisdiction while on leave or prior to enlistment is considered amenable to the jurisdiction of the Nizam's Courts, and in paragraph 4 he inquired whether in the event of such offence being extraditable and the sepoy having rejoined the colours extradition should be granted.

The Government of India in letter No. 1955-I., dated 9th June 1894 stated that Native States only had jurisdiction in the following cases:—

- (1) When a native soldier while on leave within a Native State commits an offence which renders him liable to arrest, and
- (2) When a native soldier while on leave within a Native State is arrested for an offence committed by him on some previous occasion provided the offence is one of those entered in the schedule to the Extradition Act. Thus the principle enunciated in paragraph 3 of the Resident's letter required modification inasmuch as the offence if committed before the sepoy's visit on leave to the Native State must have been an extraditable one and need not necessarily have been committed before enlistment. The question raised in paragraph 4 was left undecided.

In 1895^e a case occurred in which a native driver of the Royal Artillery was arrested and convicted of an offence of rash driving of a bullock cart by the Nizam's Court. As the man was serving with the colours at the time it was pointed out that the Nizam's Court had no jurisdiction and the Minister was asked to have the proceedings cancelled. The Resident in noting drew attention to the correspondence in E. P. 42 and remarked that "on leave" did not include "off duty",

but that a man who was merely "off duty" was still "serving with the colours", so that in the present instance it mattered not whether the man was "on duty" or "off duty."

These orders obviously left much to be desired and a further point was defined in 1900 when the Government of India ruled in letter No. 287-I.B., dated 15th January 1900^a that although the previous orders constituted a bar to the extradition of a sepoy serving with the colours when his extradition was sought under the Treaty, still if a native soldier is charged with an offence committed in a Native State and the circumstances leading up to the commission of the offence could not reasonably be connected with the performance of his duties he might be surrendered to the State authorities for trial.

The whole matter was however considered in greater detail a few years later^b when the Government of India issued the instructions contained in letter No. 1389-I.A., dated 18th April 1905. These instructions appeared to exclude the concession granted in letter No. 287-I.B.^c and a correspondence followed as to whether it was advisable, solely as a concession to Native States, to add to the instructions a rule granting Political Officers discretion to hand over offenders to Courts of Native States in cases covered by letter No. 287-I.B. where such a course would better serve the ends of justice. The Resident concurring in this proposal a revised letter^d was issued bearing the same number and date and containing what must be regarded as the most recent authoritative instructions on the subject generally.

These orders may be briefly summarised as follows:—

Native States have jurisdiction over Native Officers and sepoys of the Indian Army in the following cases:—

- (i) When the man while on leave within a Native State commits an offence against the laws of the State. It is immaterial whether or no the offence is one which subjects him to arrest.
- (ii) When the man while on leave within a Native State is arrested for an offence committed by him in that State on some previous occasion, whether or no the offence is one of those entered in the schedule to the Extradition Act and whether or no the offence was committed while on leave; provided however that the man has not already been tried by the British authorities for the offence if committed while on duty.

The Courts of Native States have no jurisdiction when the man while not on leave commits an offence within the State unless jurisdiction has been specially conceded. Where however the offence is one which renders him liable to arrest if the circumstances do not permit of immediate arrest by the military authorities the State authorities may arrest the man but must hand him over at once to the nearest Military authority. Should the Political Officer consider that for special reasons the offence is one which should be tried by the State Courts he should direct the Military authorities to hand the man over to the State for trial or to postpone proceedings pending a reference to the Governor-General in Council. The Military authorities will then either hand the man over or refer the question to the Governor-General in Council.

It may further be added that where a man is tried by the military authorities for an offence committed in a Native State, in order to promote justice and meet the convenience of the witnesses his trial should take place where the exigencies of military service permit at the Cantonment nearest the place where the offence was committed.

SUMMONS.

Arrangements are in force for the service of summonses on witnesses in criminal cases between Courts in British India, Hyderabad and the Administered Areas. Summonses for accused persons are not however forwarded whether received from British India for service in Hyderabad or the Administered Areas or from Hyderabad for service in British India or the Administered Areas; nor are such summonses issued from the Administered Areas for service in British India or Hyderabad. At one time indeed they used to be forwarded^a but they were apparently seldom served and in any case the practice was open to the objection that they could not be enforced. Hence the practice has now fallen entirely into desuetude.

^a. File No. 497 of 1896 (not in E. P.) and E. P. 57, 74.

WARRANT UNDER SECTION 7, EXTRADITION ACT.

When surrender from British India is granted for an extraditable offence a warrant under Section 7, Extradition Act, is issued by the Resident. It is necessary to say something about (a) the issue and (b) the execution of such warrants.

(a) The conditions under which a warrant should issue are laid down in the Rules framed under Section 22, Extradition Act.* These rules are self-explanatory but some thing may be said regarding Rule 4. By this rule the Political Agent is required to satisfy himself by preliminary inquiry that there is a *prima facie* case against the accused person. The rule formerly ran "by preliminary inquiry or otherwise" but the words "or otherwise" were deleted by a Notification of 1913.^b During the debate in Council^c on Act I of 1913 to amend the Extradition Act Sir Vithaldas Thackersey mentioned a supposed tendency on the part of Political Officers to issue warrants arbitrarily. In deference to the views expressed in the discussion on this Act the above Notification was issued with a view to preventing the possibility of Political Agents issuing warrants without sufficient material for satisfying themselves that a *prima facie* case exists.

Thus provided the Resident is satisfied that the *prima facie* evidence is sufficient he can issue a warrant for the extradition of any person charged with an offence extraditable either under the Act or under the Treaty. In a recent case^d a warrant was addressed to the Chief Presidency Magistrate, Bombay, for an offence of cheating. The Chief Presidency Magistrate felt a doubt in view of the fact that the offence of cheating was not entered in the Treaty^e and he referred the case to the Local Government under Section 8-A. The Bombay Government however refused to interfere and he then referred to the High Court the question among others as to whether in view of Section 18 of the Extradition Act the offence of cheating is an extradition offence so far as British India and Hyderabad State are concerned, notwithstanding its omission from Article 4 of the Treaty.

Their Lordships in deciding that the offence of cheating was an extradition offence notwithstanding its omission from the Treaty remarked that the real question was whether extraditing under the Act

a. Appendix C.

b. Foreign Department Notification No. 826-D., dated 25th March 1913.

c. Gazette of India, 23th September 1912, Part VI, page 692-II.

d. E. P. 186. *Vide* also Extraditable Offence.

e. But *Vide* E. P. 98.

for an offence not mentioned in the Treaty derogated from the provisions of the Treaty. They held for reasons given in their judgment^f that it derogated neither from the express nor from the implied provisions of the Treaty, thus confirming the oft-asserted principle that though neither side can do less than the Treaty require it is open to either side to go beyond it.^g

Warrants should according to an old precedent^h whenever possible contain the name, father's name and surname of the accused person, the place where he resides and his occupation; but where an officer is deputed to identify the man all these details would hardly be necessary. Normally the name and father's name of the accused person are sufficient to put the question of identification beyond doubt. Warrants should also invariably be signed by the Resident.ⁱ

There is another contingency in which warrants under Section 7 may be issued. When an offender is surrendered from one Native State to another and has to pass through British India it is advisable that the Political Agent for the State to which extradition is granted should issue a warrant to cover the transit of the accused person through British India.^j

(b) It is the duty of the District Magistrate to whom the warrant is addressed to execute it without demur and strict orders on this point have been issued by the Government of Bombay.^k It must however be borne in mind that under Section 15, Extradition Act, the Government of India or the Local Government may stay any proceedings and cancel any warrant issued and it has been stated that the District Magistrate to whom the warrant is addressed always had discretion to refer the matter to the Local Government with a view to its taking action under this section.^l This point was brought prominently forward in the discussion on Act I of 1913.^m In consequence of this discussion Section 8-A was added to the Extradition Act with a view to defining more clearly the powers of a District Magistrate in this connection. The orders of the Government of Bombay above referred to must therefore be read subject to this reservation. This power is however only intended to be exercised when there is something on the face of the warrant which indicates a mistake or irregularity or

f. E. P. 196.

g. E. P. 87, 145. Political Officers' Manual, page 49.

h. Not reproduced in E. P.

i. E. P. 134.

j. E. P. 85, 87, 121, 154, 163.

k. Resolution No. 7437, dated 1st December 1890. *Vide* E. P. 20, 45.

l. Cp. E. P. 45.

m. Gazette of India, 28th September 1912, Part VI, page 692-E. and Gazette of India, 1st March 1913, Part VI, page 49-E.

if the accused person when brought before the Magistrate makes some representation which leads the Magistrate to think that the case is of an exceptional nature and that it should be brought to the notice of the Local Government.^a

An instance of such a reference has been given above.^b

In executing a warrant it is only open to the Magistrate to grant bail if the warrant is endorsed under Section 8 or when he makes a reference to the Local Government.^c

As to warrants for extradition to and from the Administered Areas see Administered Areas.

a. Gazette of India, 1st March 1913, Part VI, page 50.

b. E. P. 186.

c. *Vide* Bail.

Appendix A.

Extradition Treaty between Her Majesty the Queen of Great Britain and His Highness the Nawab Afzal-ud-Daula, Nizam-ul-Mulk, Asaf Jah Bahadur, G. C. S. I., executed by Richard Temple, Esquire, C. S. I., Resident at the Court of Hyderabad, by virtue of full powers vested in him by His Excellency the Right Hon'ble. Sir John Laird Mair Lawrence, Bart., G. C. B., and G. C. S. I., Viceroy and Governor-General of India, on the one part, and Sir Salar Jang Makhtar-ul-Mulk Bahadur, K. C. S. I., by virtue of full power vested in him by His Highness the Nawab Afzal-ud-Daula, Nizam-ul-Mulk, Asaf Jah Bahadur, G. C. S. I., on the other part.

ARTICLE 1ST.

- The two Governments hereby agree to act upon a system of strict reciprocity, as hereinafter mentioned.

ARTICLE 2ND.

Neither Government shall be bound in any case to surrender any person not being a subject of the Government making the requisition. If the person claimed should be of doubtful nationality, he shall, with a view to promote the ends of justice, be surrendered to the Government making the requisition.

ARTICLE 3RD.

Neither Government shall be bound to deliver up debtors, or civil offenders, or any person charged with any offence not specified in Article 4th.

ARTICLE 4TH.

Subject to the above limitations, any person who shall be charged with having committed, within the territories belonging to or administered by, the Government of Hyderabad, or within the territories of the other, shall be surrendered; the offences are mutiny, rebellion, murder, attempting to murder, rape, great personal violence, maiming, dacoity, theft, robbery, burglary, knowingly receiving property obtained by any of the above offences, or property exceeding 100 rupees, or entering a dwelling house, or house, or town, forgery or uttering forged documents, counterfeiting current coin, knowingly

uttering base or counterfeit coin, embezzlement, whether by public officers or other persons, and being an accessory to any of the above-mentioned offences.

NOTE.—The offences of kidnapping and abduction are also added to the offences enumerated in Article 4th (vide Minister's Ruka No. 4337, dated 20th December 1870, Government letter No. 545-P., dated 17th March 1871).

ARTICLE 5TH.

In no case shall either Government be bound to surrender any person accused of any offence except upon requisition duly made by, or by the authority of, the Government within whose territories the offence shall be charged to have been committed, and also upon such evidence of criminality as, according to the laws of the country in which the person accused shall be found, would justify his apprehension and sustain the charge, if the offence had been there committed.

ARTICLE 6TH.

The above Treaty shall continue in force until either one or the other of the high contracting parties shall give notice to the other of its wish to terminate it, and no longer.

ARTICLE 7TH.

All existing engagements and agreements shall continue in full force.

Signed, sealed, and exchanged at Hyderabad on the eighth day of May in the year of our Lord one thousand eight hundred and sixty-seven.

(Signed) R. TEMPLE,

Resident.

Appendix B.

Copy of an Agreement made between His Highness the Nizam and the Government of India, dated 21st July 1887.

Whereas a treaty relating to the extradition of offenders was concluded on the 25th May 1867 between the British Government and the Hyderabad State; and whereas the procedure prescribed by the Treaty for the extradition of offenders from British India to the Hyderabad State has been found by experience to be less simple and effective than the procedure prescribed by the law as to the extradition of offenders in force in British India: It is hereby agreed between the British Government and the Hyderabad State that the provisions of the Treaty prescribing a procedure for the extradition of offenders shall no longer apply to cases of extradition from British India to the Hyderabad State, but that the procedure prescribed by the law as to the extradition of offenders for the time being in force in British India shall be followed in every such case.

. Appendix C.

Rules framed under Section 22 of the Extradition Act.

1. The Political Agent shall not issue a warrant under Section 7 of the Indian Extradition Act, 1903 (hereinafter referred to as the said Act) in any case which is provided for by Treaty, if the State concerned has expressly stated that it desires to abide by the procedure of the Treaty, nor in any case in which a requisition for surrender has been made by or on behalf of, the State under Section 9 of the said Act.

2. The Political Agent shall not issue a warrant under Section 7 of the Said Act except on a request preferred to him in writing either by or on the authority of the person for the time being administering the Executive Government of the State for which he is Political Agent or by any Court within such State which has been specified in this behalf by the Governor-General in Council or by the Governor of Madras or Bombay in Council, as the case may be, by notification in the official "Gazette".

3. If the accused person is a British subject the Political Agent shall, before issuing a warrant under Section 7 of the said Act, consider whether he ought not to certify the case as one suitable for trial in British India, and he shall, instead of issuing a warrant, so certify the case, if he is satisfied that the interests of justice and the convenience of witnesses can be better served by the trial being held in British India.

4. The Political Agent shall, in all cases before issuing a warrant under Section 7 of the said Act, satisfy himself, by preliminary inquiry that there is a *prima facie* case against the accused person.

5. The Political Agent shall, before issuing a warrant under Section 7 of the said Act, decide whether the warrant shall provide for the delivery of the accused persons:—

(a) To the Political Agent or to a British officer subordinate to the Political Agent with a view to his trial by the Political Agent, or

(b) To an authority of the State with a view to his trial by the State Courts.

Before coming to a decision the Political Agent shall take the following matters into consideration:—

(i) The nature of the offence charged;

(ii) The delay and trouble involved in bringing the accused person before himself;

(iii) The judicial qualifications of the Courts of the State;

- (iv) Whether the accused person is a British subject or not; and if he is a British (other than a European British) subject whether the Courts of the State, either by custom or by recognition, try such British subjects surrendered to them; and
- (v) Whether the Courts of the State have, by custom or by recognition, power to inflict the punishment which may be inflicted under the Indian Penal Code for an offence similar to that with which the accused person is charged.

6. Notwithstanding anything in Rule 5, the Political Agent shall make the warrant provide for the delivery of the accused persons to himself (or to an officer subordinate to himself), or to an authority of the State concerned, as the case may be, if he is generally or specially instructed by the Governor-General in Council to try an accused person himself or to make him over for trial to the proper Court of such State.

7. In the case of an accused person made over for trial to the Court of the State the Political Agent shall satisfy himself that the accused receives a fair trial, and that the punishment inflicted on conviction is not excessive or barbarous; and if he is not so satisfied he shall demand the restoration of the prisoner to his custody, pending the orders of the Governor-General in Council.

8. Accused persons arrested in British India on warrants issued under Section 7 or Section 9 of the said Act shall be treated as far as possible in the same way as persons under trial in British India.

9. A person sentenced to imprisonment by a Political Agent shall, if a British subject, be conveyed to the most convenient prison under British administration, and shall there be dealt with as though he had been sentenced under the local law:

Provided always that this rule shall not be construed so as to give such person any right of appeal other than that allowed by the rules for the time being in force for regulating appeals from the decisions of the Political Agent.

10. Nothing in these rules shall be held to apply to areas in Native States under British jurisdiction in which the Code of Criminal Procedure, 1898 (Act V of 1898) is in force.

Appendix D.

NOTIFICATION.

No. 27.

HYDERABAD RESIDENCY, the 20th December 1884.

The following Rules have been prescribed by the Government of India for the surrender of Hyderabad subjects accused of criminal offences, and present or living in the Cantonment of Secunderabad, and also for making requisitions for the surrender by His Highness the Nizam's Government of persons accused of having committed a criminal offence within the Cantonment of Secunderabad.

Rule I.—The Resident at Hyderabad is authorized by the Governor-General in Council to direct that any Native Indian subject of His Highness the Nizam may be arrested within the limits of the Cantonment of Secunderabad, and delivered over to an official of the Nizam, *provided that* the Resident shall issue no such order except in compliance with the conditions specified below, namely:—

- (1) No such order shall be issued unless the Nizam's Government applies to the Resident in writing for the arrest and surrender of the person in question.
- (2) Such application of the Nizam's Government shall furnish the Resident with information, written and duly authenticated, which he considers to be satisfactory on the following points—
 - (a) that the person whose arrest and surrender are required is a Native Indian subject of the Nizam;
 - (b) that such person is charged on reasonable grounds with having committed an offence (as defined in Section 40 of the Indian Penal Code) within the territories administered by the Nizam;
 - (c) that such person is in the Cantonment of Secunderabad.
- (3) The Resident's order shall be in such form as the Resident may, from time to time, think fit, *provided that*—
 - (a) it shall be addressed to the Cantonment Magistrate at Secunderabad, and
 - (b) it shall name the official of the Nizam to whose custody the person to be arrested shall be surrendered.

- (4) A certified copy of the order shall be furnished by the Resident to the Nizam's Government, and shall be presented by the official of His Highness named therein to the Cantonment Magistrate at Secunderabad.

Rule II.—There shall be no appeal from an order passed by the Resident under the last preceding rule.

Rule III.—The Cantonment Magistrate at Secunderabad is authorized by the Governor-General in Council to execute, within the limits of the Cantonment of Secunderabad, an order of arrest and surrender purporting to have been issued by the Resident in accordance with Rule I, *provided that* the official of the Nizam named in the order sent by the Resident to the Nizam's Government presents to the Cantonment Magistrate the certified copy thereof.

Rule IV.—If any person charged before the Cantonment Magistrate or the Assistant Cantonment Magistrate at Secunderabad with having committed an offence (as defined in Section 40 of the Indian Penal Code) within the limits of the Secunderabad Cantonment is, or is believed to be, within the territories administered by the Nizam, the Cantonment Magistrate may send to the Resident an application for the arrest and surrender of such person, and the Resident may forward the application to the Nizam's Government.

Rule V.—An application under the last preceding Rule may be made in such form as the Resident may, from time to time, think fit, *provided that* it shall furnish the Resident with satisfactory evidence on the following points:—

(a) that the person whose arrest and surrender are required is charged on reasonable grounds with having committed an offence (as defined in the Indian Penal Code) within the Cantonment of Secunderabad; and

(b) that such person is in the territories administered by His Highness the Nizam.

Rule VI.—In the event of an application for arrest and surrender under the last preceding Rule being complied with by the Nizam's Government, the Cantonment Magistrate at Secunderabad shall take measures to bring the person surrendered to trial according to law before his own Court or before the Court of the Assistant Cantonment Magistrate at Secunderabad.

(By order)

W. J. CUNNINGHAM,

First Assistant Resident.

Appendix E.

Form of cession of jurisdiction over Railway Lands.

I, Nawab Muhammad Fazl-ud-din Khan, Sikandar Jang, Iqbal-ud-Daula, Iqtidar-ul-Mulk, Viqar-ul-Umra Bahadur, K.O.I.E., Minister of His Highness the Nizam of Hyderabad, by direction of His Highness the Nizam of Hyderabad, and having His Highness' full authority in this behalf, do hereby declare and make known that His Highness the Nizam of Hyderabad cedes to the British Government full and exclusive power and jurisdiction of every kind over the lands in the said State, which are, or may hereafter be, occupied by His Highness the Nizam's Guaranteed State Railway (including all lands occupied for stations, " " " " " " " " or railway purposes) and over all persons a " " " " " " " " the said lands, and His Highness' Government shall not exercise any jurisdiction whatever on the said line of Railway.

Provided, however, that the British Government will not execute any criminal process against any person in (1) the public service of His Highness' Government, (2) His Highness' private service, on account of any offence committed, or said to have been committed, in any place other than on a line of railway over which the Government of India exercise criminal jurisdiction.

A person is in the public service of His Highness' Government when he is paid by the Dewani revenues in respect of his employment or receives any emoluments therefrom, provided that in the former class the pay is not less than Rs. 100 per mensem and in the second that the emoluments are paid by way of Mānsab of not less than Rs. 100 per annum, and that the Mansabdar produces a certificate granted by His Highness' Government declaring him to be such.

A person is in His Highness' private service when he is employed under His Highness' orders, in attendance on His Highness' person in his place or employed under the orders of His Highness' Sarf-i-khas Secretary in administering the affairs of the Sarf-i-khas. A person who is a servant of His Highness' private servant is not in His Highness' private service.

Although His Highness hereby undertakes to cease to exercise jurisdiction on the said line of railway, His Highness retains the right to receive, as he has hitherto received, the excise and customs revenue accruing on the said lands, which are, or may hereafter be, occupied by the said railway: therefore His Highness makes this cession subject

to the proviso that the British authorities on the said lands will grant to officers in the public service of His Highness' Government all those facilities which have hitherto been allowed to them for the purpose of realising the said excise and customs revenues.

Signed and sealed on the 28th day of May

One thousand nine hundred and one, A.D.

VIQAR-UL-UMRA.

Appendix F.

Jurisdiction in Secunderabad, Residency Bazars and Railway Land

1. The subject of the Resident's jurisdiction in Secunderabad, the Residency Bazars and Railway lands is intimately connected with that of extradition and for a proper understanding of our extradition policy in respect of these areas which are known as the Administered Areas it is essential to grasp the principles upon which this jurisdiction is based. As however this subject is separate from, though germane to, that of extradition these notes are given in the form of an Appendix.

The jurisdiction of the British authorities in these areas falls under the head of extra-territorial jurisdiction," that is to say it is jurisdiction exercised by the Governor-General in Council in areas outside the limits of British India. Two questions naturally suggest themselves. First, how has the Governor-General in Council acquired this jurisdiction? And secondly how does he exercise it? A general answer to the first question is supplied by the preamble to the Indian (Foreign Jurisdiction) Order in Council, 1902,* which says "Whereas by treaty, grant, usage, sufferance and other lawful means His Majesty the King has powers and jurisdiction, exercised on His behalf by the Governor-General of India in Council in India and in certain Territories adjacent thereto". And a general answer to the second question is supplied by the provisions of the same Order in Council by which the Governor-General in Council is empowered to make such rules and orders as may seem expedient for carrying the Order into effect.

2. It is important to keep these two questions apart and to remember two things, (a) that the Governor-General in Council can only exercise jurisdiction within the limits of the treaty or grant for as has been remarked "the stream can rise no higher than its source", and (b), that the authority of Courts and officers within the Administered Areas is derived directly from the Governor-General in Council and not from the Sovereign of the State within which it is exercised.

These principles are best illustrated by concrete examples and as an illustration of the first principle may be quoted the case of *Muham-mad Yusuf-ud-din versus Queen Empress*.^b This case will be alluded to below but a brief allusion to it may here be made. The appellant in

aa. In another sense this jurisdiction is territorial or jurisdiction exercised over territory as contrasted with personal jurisdiction, e.g., jurisdiction over European British subjects in Native States.

a. Macpherson, Volume VI, page 23.

b. Privy Council Judgments, Volume VII, page 239.

the case had been arrested in Railway lands in Hyderabad in connection with an offence alleged to have been committed at Simla. The arrest was held to be justified under a Government Notification of 22nd March 1888^a under the Foreign Jurisdiction and Extradition Act, 1879, which applied among others the provisions of the C. P. C., to the Railway lands in Hyderabad. It was however held by the Privy Council that the jurisdiction which had been granted by His Highness the Nizam to the Governor-General in Council over these lands was one "along the line of railways" only and that no such jurisdiction had been granted as would warrant the arrest of the appellant.

In illustration of the second principle may be quoted the following passage from a recent appellate judgment of the Hon'ble the Resident in a case on the file of the Civil Judge, Secunderabad.⁴

I cannot pass without comment the Lower Court's further remark that the Administered Areas in Hyderabad form an integral part of His Highness' Dominions, and that the jurisdiction of the Courts therein is derived from the Ruler of the State. This statement it appears may be calculated to cause misapprehension and as worded might not possibly create a mistaken impression that the basis of the decision in this case is to be found in a wrong understanding of "what is loosely called international comity", although I am far from implying that the learned First Assistant Resident himself entertained any misapprehension on the subject. As a matter of fact the jurisdiction of the British Courts in the Administered Areas is derived from His Majesty's Indian (Foreign Jurisdiction) Order in Council of 1902 which authorises the Governor-General in Council on His Majesty's behalf to exercise any power or jurisdiction which His Majesty or the Governor-General of India in Council for the time being has therein by "treaty, grant, usage, sufferance or other lawful means" and to make such rules and orders as may seem expedient for determining among other things the law and procedure to be observed, the persons who are to exercise jurisdiction therein, and the powers to be exercised by them. And with regard to the name "comity" as sometimes applied to the subject of private international law I cannot express my meaning better than by quoting the following passage from Dicey (conflict of Laws page 10):—"If the assertion that the recognition or enforcement of foreign law depends upon comity means only that the law of no country can have effect as law beyond the territory of the sovereign by whom it was imposed unless by permission of the State where it is allowed to operate, the statement expresses though obscurely a real and important fact. If on the other hand the assertion that the recognition or enforcement of foreign laws depends upon comity is

meant to imply that, to take a concrete case, when English Judges apply French law, they do so out of courtesy to the French Republic, then the term "comity" is used to cover a view which, if really held by any serious thinker, affords a singular specimen of confusion of thought produced by laxity of language. The application of foreign law is not a matter of caprice or option; it does not arise from the desire of the sovereign of England or of any other sovereign to show courtesy to other States. It flows from the impossibility of otherwise determining whole classes of cases without gross inconvenience, and injustice to litigants, whether natives or foreigners."

3. Having thus made clear these two principles, namely that the authority delegated by the Governor-General in Council within the Administered Areas is limited to the extent of the jurisdiction acquired by him and that the authority of Courts and officers in these areas is derived not from the Ruler of the State but from the Governor-General in Council, we may discuss in detail the first of the two questions originally propounded, namely the nature of the jurisdiction acquired by the Governor-General in Council in these areas. The second question, as to the manner in which it is exercised, has already been discussed in the foregoing notes so far as is necessary for the purposes of extradition.

4. We may take first the case of Secunderabad. Most of the information under this head is derived from an interesting summary among the records of the Residency Office.* The origin of our jurisdiction in Secunderabad appears to be dual. It is one of the incidents of the Paramount Power that the British Government can station troops at any place within Native States where they are considered necessary and Native States are bound to permit such cantoning. But troops of the Subsidiary Force were stationed at Hyderabad not merely as a matter of right and necessity but at the express wish of His Highness the Nizam. On 1st September 1798 a treaty[†] was concluded with His Highness' Government the preamble of which says "Whereas His Highness Nizam-ul-Mulk . . . has . . . expressed a desire for an increase of the detachment of the Honourable Company's troops at present serving His Highness . . ." Article 4 of the Treaty says "A place shall be fixed on as the head-quarters of the said force where it shall always remain except when services of importance are required to be performed." In 1806 the vicinity then known as Husain Saugor was fixed as the head-quarters of the Subsidiary Force and a year later the name of this place was at the wish of the Nizam changed to Secunderabad.

e. Summary of correspondence relating to Secunderabad: vide especially Part VII.
f. Aitchison, Vol. IX, page 61.

In 1872 Mr. Saunders gave his view of the position as follows:—

“The authority exercised by the Resident has been as a matter of fact derived by direct delegation as a matter of convenience and expediency from His Highness the Nizam and it is not based on any treaty engagement.” Again the inhabitants forming the civil population of the Secunderabad Cantonment are with perhaps few exceptions subjects of His Highness the Nizam . . .”

In the same year the Government of India gave an authoritative definition which seems to embody the only sound view. They wrote “The Secunderabad Cantonment is occupied under treaty which requires the British Government to station British troops within the Nizam’s territory. Full and complete jurisdiction accordingly follows ipso facto from the occupation of it under the acknowledged principle of law that the portion of territory occupied by an army is within the dominion of the State to which the army belongs for all purposes of jurisdiction over persons within the limits of the space so occupied. Whatever be the foundation on which it rests the British jurisdiction exists as a matter of fact in the Cantonment”.

In 1882 Sir Stuart Bayley addressed the Government of India on the question as to whether in cases of extradition between Hyderabad and Secunderabad the treaty of 1867 or certain rules of 1875 would apply. The following extracts are taken from his letter “The decision must really depend on the answer to be given to the antecedent question whether the cantonment is to be considered as forming part of “territories belonging to or administered” by the British Government. The answer depends I venture to think on consideration relating to (a) the history of the jurisdiction exercised in the Secunderabad Cantonment by our officers and (b) the application to it of international law”. After then discussing the history of our jurisdiction at length he remarked “The most important feature in the recent period has been that numerous Acts have been from time to time extended to the cantonment by order of His Excellency the Viceroy and without any consultation with or communication to His Highness’ Government. These lead to the supposition that the Government of India have little doubt as to the completeness and exclusiveness of the jurisdiction of our courts in the cantonment. Turning now to the question of international law, I believe it has been accepted as a general principle that where the troops of one State are allowed to be cantoned in another State the jurisdiction of the latter over the troops and camp followers is suspended and that the occupying State substituted for it. But Secunderabad is not a mere cantonment. It is an important trade centre and contains a population of 40,000 to 50,000 souls who have no connection whatever with the military or their requirements. The rent on cultivated ground within its boundaries is paid to the Nizam’s

Government who also farm the abkari revenues and collect octroi and customs duties within it." He then stated his view that the Nizam's jurisdiction had not been ousted.

The Government of India in reply referred to their previous letter explaining the principles underlying the exercise of British jurisdiction in the cantonment and said that they saw no necessity for further discussion on the subject more especially since it was an admitted fact that the British courts had in practice complete criminal and civil jurisdiction at Secunderabad. In order however to give the Nizam's Courts all reasonable facilities for obtaining the surrender of criminals it was suggested that rules should be framed for sanction authorising the Resident to comply with requests from the Hyderabad authorities.

As a result of this correspondence the rules regarding extradition now in force were framed.

6. We may now turn to the question of our jurisdiction in the Residency Bazars. Jurisdiction here is also one of the incidents of Paramountcy and should be treated on the same principles as Cantonment jurisdiction.^h Our jurisdiction is not derived from any cession by His Highness' Government express or implied, and is independent of the consent of the State. It is a case of jurisdiction possessed by "usage, sufferance or other lawful means" inherent in the British Government and inseparable from its Paramountcy and has nothing to do with "treaty or grant". The materials for a consideration of this point are contained in two files.ⁱ In 1888 the Officiating Resident addressing the Government on the subject of civil administration in the Residency Bazars wrote^j "No Acts with the exception of the Indian Succession Act of 1865 have heretofore been formally applied to the Residency Bazars. And the question arises whether enactments of the British Government can be formally applied without the consent of His Highness the Nizam. The Superintendent, Residency Bazars, has hitherto it is understood been 'guided by the spirit' of the British laws".

In 1890 a proposal emanated to apply the Probate and Administration Act to the Residency Bazars. The Government of India replied that the application of the Act might raise troublesome questions of jurisdiction and inquired whether it would be inconvenient to continue as heretofore with a direction to Superintendent, Residency Bazars, to be "guided by the spirit" of British laws. They also requested the Resident's opinion as to whether enactments of the British Government could be formally applied within Residency Bazars limits

h. Here too the analogy of international law whereby extraterritorial jurisdiction exists in diplomatic residencies may be invoked but it is strictly speaking inapplicable.

i. File Nos. 786 of 1890 and 534 of 1893.

Letter No. 153, dated 6th September 1893, continued in File No. 793 of 1893.

without the consent of His Highness' Government: The Resident replied that the practice as regards obtaining the previous concurrence of His Highness' Government in each individual case to legislation proposed for the Residency Bazars seems to have varied from time to time; it was not obtained on the last occasion on which legislation took place. He continued "As regards the thing would depend on the terms on which possession and administration of the Bazars, though those terms might of course be considerably modified by subsequent practice. Unfortunately there is no record of these terms now traceable in this office and that being so I can form an opinion on the point raised by the Government of India only by looking to our position in regard to the Bazars generally. Upon this I should say that it is closely analogous to our position in a cantonment established in a Native State, where it is admitted that our settlement on the land whether obtained under an express grant or with the tacit acquiescence of the native power or otherwise carries with it a full power of legislation. It seems to me that it would be impossible for us to take upon ourselves the responsibility of administering a tract like the Residency Bazars unless this power was conceded to us and that in the absence of any clear proof to the contrary it must be taken to have been conceded to us. This if I recollect rightly was the view that prevailed when the question came before the Government of India some years ago in the case of a similar bazar—I think it was the Residency Bazars at Indore—and I would accordingly propose that until the question is raised from some other quarter we should act on the assumption that we have full powers of legislation. I would however propose to use those powers cautiously and only when it seemed to be absolutely necessary to do so".

Eventually the Government of India issued a Notification applying the Probate and Administration Act to the Residency Bazars.

Since then Acts have continually been applied without reference to the Nizam's Government.

7. His Highness' Government in July 1898 published a notification in the Jarida stating that His Highness' Court of Wards intended taking charge of the estate of one Bellap Hanmant Rao. Part of this estate consisted of moveable and immoveable property situated within the Residency Bazars. The Minister was informed that as far as the property situated in the Residency Bazars was concerned the Resident saw no reasons for taking the exceptional step of delegating the supervision of the management to the Court of Wards of His Highness' Government; a request was added that the Jarida should be modified accordingly. The Minister then requested that he might be furnished with copies of any correspondence that might have taken place authorising the Resident to exercise powers under the Guardian and Wards Act with respect to His Highness' subject; adding that in the

Government, which gives a good general idea of the position as it then stood. The history of our jurisdiction can be divided into three periods, (i) 1873-1887, (ii) 1887-1901, and (iii) 1901 onwards. During the first period there was a delegation of powers by His Highness the Nizam direct to the Resident who was invested with the powers of a Local Government. The details of this rather unsatisfactory arrangement need not now be discussed but in 1887 the then Resident proposed to His Highness the Nizam of India that the Government of India should transfer to the British Government jurisdiction over railway lands and premises".

Certain objections were put forward by His Highness' Government and met by the Resident who repeated his request that "His Highness should delegate to the British Government the criminal and civil jurisdiction along the line". Eventually the Resident was informed that "His Highness' Government is willing to accede to the wishes of the Government of India regarding the criminal jurisdiction along the line of railway as is the case on other lines running through Independent States". Thus commenced the second period which may be called one of an informal transfer of jurisdiction to the British Government. In pursuance of this arrangement the Governor-General in Council by Notification No. 1143-I. of 22nd March 1888 under the Foreign Jurisdiction and Extradition Act, 1879, extended among other the provisions of the C. P. O., "so far as they may be applicable" to the Railway lands.

9. Such was the position when Muhammad Yusuf-ud-din's case occurred. This man was an official in His Highness' Government service and had been on a visit to Simla. After his departure the Magistrate at Simla issued a warrant for his arrest in connection with a non-extraditable offence committed at that place and sent the warrant to the Resident. It was executed in November 1895 in Railway lands at Shankarpalli. The legality of the arrest was called in question but upheld by the Chief Court of the Panjab. On appeal to the Privy Council however it was held that the arrest was illegal. The main ground for this decision was that the correspondence regarding transfer of jurisdiction was interpreted as granting only a limited jurisdiction for dealing with criminal and civil cases arising along the line of the railway.

10. This case naturally gave rise to a good deal of correspondence with a view to putting things on a more satisfactory basis. Into the details of this correspondence it is not necessary at present to go. It will be sufficient to note that in 1899 the Government of India put forward a proposal that "full and exclusive power and jurisdiction of every kind" should be ceded by His Highness the Nizam to the British Government. They remarked that "they did not ask for any

cession of sovereignty but for a cession of jurisdiction such as to enable them to exercise during its currency and in respect of the lands dealt with all power and jurisdiction whether administrative, legislative or judicial". His Highness' Government demurred to acceding to this request in toto^m but wished to make certain reservations, (a) that the jurisdiction asked for should not be exercised over His Highness' officials and servants except as provided for in the Extradition Treaty and except as regards offences committed on the line of rail, (b) that the rights of His Highness' Government to carry out revenue laws and regulations should not be interfered with and (c) that the cession should not apply to light feeder lines.

* Eventually deeds of cession" were executed for all Railway lands on 28th May 1901 by which His Highness' Minister "by direction of His Highness the Nizam ceded to the British Government full and exclusive power and jurisdiction of every kind" with the reservations above indicated.

Thus our power of jurisdiction over these lands is now based on these deeds of cession and the application to them in pursuance thereof of certain Acts under the Indian (Foreign Jurisdiction) Order in Council of 1902.

11. Hence it is clear that for all practical purposes subject to certain well recognised restrictions and reservations the Governor-General in Council has acquired full jurisdiction in these areas and subject to these reservations the Resident exercises all administrative and judicial functions by virtue of delegation by the Governor-General in Council under the Indian (Foreign Jurisdiction) Order in Council. It may be said that while the origin of our jurisdiction is different in the case of the different areas its nature is the same.

In Secunderabad our jurisdiction follows the cantoning of troops and is one of the incidents of the Paramount Power; in the Residency Bazars our jurisdiction is also an incident of Paramountcy and is very similar to that of Secunderabad; and in the case of Railway lands we have acquired jurisdiction by direct cessions.

The sovereignty of the Nizam over these lands is not however exhausted and our jurisdiction is subject to a further limitation in addition to those already mentioned. Extraterritorial jurisdiction arises for a particular purpose and abates on the cessation of that purpose. Should the garrison of Secunderabad be transferred to cantonments elsewhere, should the Resident move his head-quarters say to Golconda or should a line of railway be abandoned jurisdiction over these lands would automatically revert to the Nizam without legislation.

m. Letter No. 1333, dated 6th September 1899, in file No. 350 of 1899.

n. One of these is printed as Appendix E, the others are exactly similar.

One further point which is of importance in a consideration of extradition remains . . . these areas being extraterritorial . . . our jurisdiction in British . . . not apply proprio vigore to the Administered Areas; they apply only by virtue of a notification under the Indian (Foreign Jurisdiction) Order in Council. Hence for extradition purposes these areas are regarded not as part of British India, although largely under the same laws, nor as part of Hyderabad State, although situated therein, but as intermediate between the two. This position has never been very clearly defined but a body of fairly consistent practice has sprung up and has been illustrated in the foregoing notes. In general it may be remarked that in our relations with Hyderabad a far greater liberality is displayed on both sides than is the case between British India and Hyderabad, while in our relations with British India the practice approximates to, although it is not identical with, that between different parts of British India.

